

Chad M. Knight
James E. Roberts
W. Adam Duerk
Seamus Molloy
KNIGHT NICASTRO MACKAY, LLC
283 W. Front Street, Suite 203
Missoula, Montana 59802
Telephone: (406) 206-7052
Facsimile: (816) 396-6233
knight@knightnicastro.com
roberts@knightnicastro.com
duerk@knightnicastro.com
molloy@knightnicastro.com
Attorneys for BNSF Railway Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BNSF RAILWAY COMPANY, on
behalf of THE UNITED STATES OF
AMERICA

Plaintiff,

vs.

THE CENTER FOR ASBESTOS
RELATED DISEASE, INC.,

Defendant.

Civil Action No.: CV-19-40-M-DLC

**NOTICE OF FILING DEPOSITION
TRANSCRIPTS**

Pursuant to the Final Pretrial Conference held in this matter on June 8, 2023,
Relator, BNSF Railway Company (“BNSF”), by and through its attorneys of record,
Knight Nicastro MacKay, LLC, file the following deposition:

Exhibit A Videotaped 30(b)(6) Deposition of the Agency for Toxic Substances and Disease Registry through Theodore Larson , May 9, 2023

Exhibit B Videotaped 30(b)(6) Deposition of the Social Security Administration, by and through its designated representative of Heather Hillman, May 16, 2023

Exhibit C Videotaped 30(b)(6) Deposition of the Social Security Administration, by and through its designated representative Monica Nolan, June 8, 2023

DATED this 13th day of June, 2023.

KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

CERTIFICATE OF SERVICE

I certify on this 13th day of June, 2023, a copy of the foregoing document was served upon the following persons by the following means:

<u>1-3</u>	CM/ECF
<u> </u>	Mail
<u> </u>	Hand Delivery
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<u> </u>	Email

1. Clerk, U.S. District Court
2. Michael Kakuk
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
michael.kakuk@usdoj.gov
3. Timothy Bechtold
Bechtold Law Firm, PLLC
PO Box 7051
Missoula, MT 59807
Facsimile: 406-830-3085
tim@bechtoldlaw.net

KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

<p>IN THE UNITED STATES DISTRICT COURT</p> <p>FOR THE DISTRICT OF MONTANA</p> <p>MISSOULA DIVISION</p> <p>BNSF,</p> <p>Plaintiff, CV-19-40-M-DLC</p> <p>v.</p> <p>CARD,</p> <p>Defendant.</p> <p>~~~~~</p> <p>VIDEOTAPED 30(b)(6) DEPOSITION OF THE AGENCY FOR TOXIC</p> <p>SUBSTANCES AND DISEASE REGISTRY</p> <p>THROUGH THEODORE LARSON</p> <p>May 9, 2023</p> <p>8:35 a.m.</p> <p>2900 Chamblee Tucker Road</p> <p>Building 13</p> <p>Atlanta, Georgia</p> <p>Lori Johnston, CCR</p> <p>Certified Court Reporter #5682-4498-7599-2576</p>	<p>Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4</p> <p>5 W. ADAM DUERK, Esquire</p> <p>6 Knight Nicaastro Mackay, LLC</p> <p>7 283 W. Front Street</p> <p>8 Suite 203</p> <p>9 Missoula, Montana 59802</p> <p>10 (406) 206-1535</p> <p>11 duerk@knightnicaastro.com</p> <p>12</p> <p>13 On behalf of the Defendant:</p> <p>14</p> <p>15 TIMOTHY BECHTOLD, Esquire</p> <p>16 Bechtold Law Firm, PLL</p> <p>17 www.GeorgiaReporting.com 317 East Schenck Street</p> <p>18 404.389.1155</p> <p>19 Missoula, Montana 59802</p> <p>20 (406) 721-1435</p> <p>21 (406) 830-3085 (facsimile)</p> <p>22 tim@bechtoldlaw.net</p> <p>23</p> <p>24</p> <p>25 (Continued on the next page.)</p>
<p>Page 3</p> <p>1 On behalf of the CDC and ATSDR:</p> <p>2</p> <p>3 MARK S. KASHDAN, Esquire</p> <p>4 OGC, DHHS, MS D-53</p> <p>5 Centers for Disease Control</p> <p>6 1600 Clifton Road</p> <p>7 Atlanta, Georgia 30329</p> <p>8 (404) 639-7448</p> <p>9 (404) 639-7361 (facsimile)</p> <p>10 mrk6@cdc.gov</p> <p>11</p> <p>12 On behalf of the United States:</p> <p>13</p> <p>14 MICHAEL A. KAKUK, Esquire</p> <p>15 Assistant U.S. Attorney</p> <p>16 U.S. Department of Justice</p> <p>17 901 Front Street</p> <p>18 Suite 1100</p> <p>19 Helena, Montana 59626</p> <p>20 (406) 457-5262</p> <p>21 (406) 457-5130 (facsimile)</p> <p>22 michael.kakuk@usdoj.gov</p> <p>23</p> <p>24</p> <p>25 (Continued on the next page.)</p>	<p>Page 4</p> <p>1 Also present:</p> <p>2</p> <p>3 Ms. Tracy McNew, Executive Director of CARD</p> <p>4 Mr. Brian Stephens, Videographer</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 having been first duly sworn, was examined and testified as</p> <p>2 follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. BECHTOLD:</p> <p>5 Q Mr. Larson, my name is Tim Bechtel and I represent</p> <p>6 the CARD Clinic. And you understand that today you have been</p> <p>7 designated as a person of knowledge by the United States on</p> <p>8 behalf of The Agency for Toxic Substances and Disease Registry</p> <p>9 as to represent the government in this deposition?</p> <p>10 A Yes.</p> <p>11 (Exhibit No. 350 is introduced and identified for the</p> <p>12 record.)</p> <p>13 Q I'm going to hand you Exhibit 350. Tell me if you</p> <p>14 recognize what that is.</p> <p>15 (Witness reviews Exhibit No. 350.)</p> <p>16 A I do recognize this.</p> <p>17 Q And what is it?</p> <p>18 A It is my declaration from last September regarding</p> <p>19 this case.</p> <p>20 Q All right. Very good. So Mr. Larson, where do you</p> <p>21 work?</p> <p>22 A I work for the Agency for Toxic Substances and</p> <p>23 Disease Registry.</p> <p>24 Q How long have you worked for the -- if I may call it</p> <p>25 the ATSDR?</p>	<p>1 A 23 years.</p> <p>2 Q And what is your current position?</p> <p>3 A I am an epidemiologist.</p> <p>4 Q And what are your job responsibilities?</p> <p>5 A So I run human health studies, I oversee non-research</p> <p>6 grants, and do other duties as assigned.</p> <p>7 Q And what would have been your various jobs at ATSDR</p> <p>8 since you started there?</p> <p>9 A I've been an epidemiologist the whole time I've been</p> <p>10 with ATSDR.</p> <p>11 Q What is your educational training?</p> <p>12 A I have a master's degree from Colorado State and a</p> <p>13 bachelor's degree from the University of Colorado.</p> <p>14 Q And when did you start at ATSDR?</p> <p>15 A In 2000.</p> <p>16 Q What's ATSDR's mission?</p> <p>17 A To protect the public from toxic substances at</p> <p>18 hazardous waste sites and other sites.</p> <p>19 Q So how does the grant funding that ATSDR provides the</p> <p>20 CARD Clinic advance ATSDR's mission?</p> <p>21 A The CARD grant is a public service that allows the</p> <p>22 public to find out if they've been exposed to asbestos in</p> <p>23 Libby, Montana.</p> <p>24 Q And how does that benefit ATSDR?</p> <p>25 A It's a community service. It does not -- you know,</p>

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1 it's part of ATSDR's mission. It doesn't really benefit ATSDR.

2 **Q Does it benefit the people of the United States?**

3 A Yes.

4 **Q In which way?**

5 A It -- it improves the public health of -- of

6 taxpayers. You know, they -- they understand better what their

7 health is after exposure to toxic substances in the

8 environment.

9 **Q When did you first become aware of asbestos**

10 **contamination in Libby, Montana?**

11 A About the same time I started at ATSDR, so that would

12 have been April of 2000.

13 **Q And what was that exposure that you became aware of?**

14 A So I had many peers working in Libby at the time that

15 I started and just word-of-mouth at the breakroom. You know,

16 in the breakroom, over the water cooler, people were talking

17 about what they were doing in Libby.

18 **Q And when did you first become aware of the CARD**

19 **Clinic?**

20 A So I believe the CARD opened its doors long after I

21 started at ATSDR. It might have been in the early aughts.

22 When I say "aughts," maybe 2003 or -- or so. So there was some

23 time, I think, before CARD officially the -- opened its doors

24 after I started working in Libby.

25 **Q So you were working in Libby prior to CARD's**

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1 Care Act grants, there was another grant that ATSDR was

2 involved with -- involved with and it was through

3 the -- through HRSA. And prior to that we also had

4 collaborated with CARD on several other smaller studies and

5 ATSDR had paid for some data from CARD. I forget the exact

6 years, but we would run a couple of studies where we relied on

7 CARD to provide just X-rays and CT scans for studies.

8 **Q And had ATSDR made grants to -- to screening programs**

9 **in Libby prior to the passage of the Affordable Care Act?**

10 A So there was an additional screening grant that ATSDR

11 oversaw prior to the HRSA grants and that was to the state

12 health department to do screening in Libby.

13 **Q And how did passage of the Affordable Care Act affect**

14 **ATSDR's relationship with CARD?**

15 A So to stand up a grant of that size required

16 coordination with CARD back in the day and so, you know, it

17 always has been a very professional relationship with CARD and

18 a great working relationship so I don't think that changed. It

19 was about the same relationship.

20 **Q Okay. So had ATSDR funded CARD prior to the passage**

21 **of the ACA?**

22 A So I wasn't directly involved with the HRSA grant.

23 I'm not sure where those funds came from. And when you say,

24 "funded," I mean, you know, it's federal dollars and sometimes

25 it flows to different agencies. I don't recall the exact flow

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1 existence?

2 A I believe so.

3 **Q And what was your involvement with the CARD Clinic**

4 **when it first started?**

5 A So I had -- I had met the director of CARD, Dr. Brad

6 Black. At the time he was the -- he was in charge of the

7 county health department and he was greatly aiding ATSDR with

8 its mission there in Libby. And so I got to know him and, you

9 know, I'm sure we crossed paths. We collaborated on some

10 studies early on, as early as 2003 probably. And also, I'll go

11 back to your question. Did I answer your question?

12 **Q Close enough. And so the Affordable Care Act got**

13 **passed in 2010, correct?**

14 A Yes.

15 **Q And so what was your involvement with the CARD Clinic**

16 **from its inception, as you've testified, about 2003 until 2010,**

17 **prior to the passage of the Affordable Care Act?**

18 MR. DUEK: 404.389.1155 Objection: Relevance.

19 Go ahead.

20 A For my personal involvement, or?

21 BY MR. BECHTOLD:

22 **Q No, ATSDR's.**

23 A ATSDR's?

24 **Q Yeah.**

25 A So -- so immediately preceding the -- the Affordable

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1 for the dollars for the HRSA grant, for example. But that

2 would have been the first grant that I can recall to CARD from

3 ATSDR.

4 (Exhibit No. 301 is introduced and identified for the

5 record.)

6 **Q Okay. I'm going to hand you Exhibit 301. Could you**

7 **tell me what that is?**

8 (Witness reviews Exhibit No. 301.)

9 A This is a Notice of Funding Opportunity. And looking

10 at the key dates or the key date fields, it appears this was

11 the first NOFO to the CARD back in 2011.

12 **Q I'd like you to turn to page 3 of Exhibit 301.**

13 (Witness complies.)

14 **Q And tell me, what is the -- what was the purpose of**

15 **that grant?**

16 A So reading from the NOFO's text, under "Purpose:"

17 "The purpose of the program is to (1) provide medical

18 screening to persons with possible exposures to amphiboles that

19 occurred in Libby and Troy, Montana; (2) conduct nationwide

20 outreach to raise awareness of the screening program among

21 persons eligible to participate and of the availability of

22 certain Medicare benefits; and (3) provide health education to

23 detect, prevent, and treat environmental health conditions.

24 The three components of this project, screening, outreach, and

25 education, will be conducted in an integrated manner. In order

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1 to maintain continuity with the current Libby area screening
2 program, screening under this FOA should be implemented in two
3 phases: Phase 1 in the Libby area and Phase 2 at other
4 locations in the U.S. that include screening candidates no
5 longer residing in Libby. The grantee should prioritize
6 implementing a program for Phase 1, such that no gap in service
7 occurs for Libby area residents. This program addresses the
8 "Healthy People 2020" focus of environmental health."

9 Q And how did the -- this funding opportunity come
10 about?

11 A So, under ACA statute, HHS had to stand up a grant
12 program to fulfill that purpose that I just read. And it came
13 down to the group that I was working in at ATSDR because we had
14 managed prior screening programs.

15 Q So as I understand your testimony, the -- the
16 Affordable Care Act required Health and Human Services to
17 create these funding opportunities?

18 A Yes.

19 (Exhibit No. 305 is introduced and identified for the
20 record.)

21 Q I'm going to hand you Exhibit 305. Could you tell me
22 what that is, please?

23 (Witness reviews Exhibit No. 305.)

24 A This is the actual Affordable Care Act statute.

25 Q And I'd like you to turn to the Section 2009, which

Page 18

1 is the second last page.

2 (Witness complies.)

3 Q Under "Program Establishment" -- and the purpose you
4 just read for your Notice of Funding Opportunity, does that
5 match with Section 2009's purposes?

6 MR. DUERK: Objection to form.

7 Go ahead.

8 BY MR. BECHTOLD:

9 Q Just -- just before you answer --

10 A Sure.

11 Q -- what -- what is the purpose as -- as stated in
12 Section 2009?

13 A You'd like me to read it?

14 Q Just tell me.

15 A Oh.

16 Q You can read it or tell me.

17 www.GeorgiaReporting.com/Schedule
404.389.1155
18 A So reporting is that it's the same purposes in the
19 NOFO. The NOFO mirrors the statute so it's to do outreach,
20 education, and screening.

21 Q So basically as I understand it then, the -- the
22 purpose as designed in -- in the Notice of Funding Opportunity
23 mirrors the Act?

23 A Yes.

24 Q And that is delivered?

25 A I'm sorry?

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1 Q Was that delivered?

2 MR. DUERK: Objection: Foundation.

3 Go ahead.

4 A Yes.

5 BY MR. BECHTOLD:

6 Q And who created the Notice of Funding Opportunity?

7 A So it was -- many people worked on it. I may have
8 come up with an early draft but it was reviewed and edited by
9 many people around me too. And we had many high-end physicians
10 at CDC that reviewed it and -- and commented on it. And so it
11 was a team effort at ATSDR.

12 Q But you were part of that team?

13 A I was part of the team.

14 Q And -- and you were integral in -- in the creation of
15 the -- of the funding opportunity request?

16 A So I wouldn't say I was integral. I could have been
17 replaced by somebody else pretty easily I think but I --

18 Q Just --

19 A -- I -- I did participate.

20 Q Just a cog in a wheel?

21 A I'm just a cog in a wheel.

22 Q All right. I'd like you now to return to Exhibit
23 301.

24 (Witness complies.)

25 Q And on page 5 of Exhibit 301, in Section E,

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1 the -- the positive screening result definition, could you
2 describe what the positive screening result definition was for
3 this funding opportunity?

4 A So it -- it's the presence of -- reading directly out
5 of the -- the NOFO, presence of asbestosis, pleural thickening
6 or pleural plaques as established by one of two ways.
7 Interpretation of a single B-reader qualified physician of a
8 plain chest X-ray or interpretation of a computer tomography of
9 the chest by a qualified physician.

10 Q And what is a qualified physician?

11 A Again, reading directly from the text of the NOFO,
12 that would be "a physician with board certification in
13 radiology or pulmonary medicine or an interpretation provided
14 by the Center for Asbestos-Related Disease Clinic for patients
15 in the Libby area."

16 Q What is a B-reader?

17 A A B-reader is a physician with special training to
18 look at chest radiographs, chest X-rays, and pick out
19 structures that are consistent with asbestosis, pleural
20 thickening, or pleural plaques.

21 Q So if a -- a positive screening result could be a
22 single B-reader interpreting a chest X-ray?

23 A Yes.

24 Q And it could also be a qualified physician
25 interpreting a CT scan?

<p style="text-align: right;">Page 21</p> <p>1 A Yes.</p> <p>2 Q And does a -- this positive screening definition</p> <p>3 result is -- I'd like you to -- refer you again to Exhibit 305.</p> <p>4 (Witness complies.)</p> <p>5 Q And does this positive screening result from Section</p> <p>6 1E of the Notice of Funding Opportunity, does it also mirror or</p> <p>7 where is that based -- rather, what is the basis of the -- the</p> <p>8 positive screening definition from the Notice of -- of Funding</p> <p>9 Opportunity?</p> <p>10 A So that's also based on statute and I just happen to</p> <p>11 have it open, I think, to the -- it's the next to the</p> <p>12 last -- it's the last sheet but the next to the last page under</p> <p>13 the section that starts "Environmental Health Condition" and it</p> <p>14 has some terms there; asbestos is pleural thickening or pleural</p> <p>15 plaques. So to your point, the -- the -- that passage from the</p> <p>16 NOFO mirrors the -- this -- this section in the statute also.</p> <p>17 Q So in the conditions described in Section</p> <p>18 (e)(2)(B)(i)?</p> <p>19 A Is that a question?</p> <p>20 Q Yeah.</p> <p>21 MR. DUERK: Objection: Form.</p> <p>22 What is the question?</p> <p>23 MR. BECHTOLD: Sorry.</p> <p>24 BY MR. BECHTOLD:</p> <p>25 Q Are you talking about Section (e)(2)(B)(i)?</p>	<p style="text-align: right;">Page 22</p> <p>1 A Yes.</p> <p>2 MR. DUERK: Objection: Vague.</p> <p>3 BY MR. BECHTOLD:</p> <p>4 Q All right. I'd like you -- to direct you to the</p> <p>5 second last page of Exhibit 305.</p> <p>6 (Witness complies.)</p> <p>7 A Uh-huh (affirmative). Yes, sir.</p> <p>8 Q And I'd like to draw your attention to the definition</p> <p>9 section. What is the definition of environmental health</p> <p>10 condition?</p> <p>11 MR. DUERK: Objection: Foundation.</p> <p>12 Go ahead.</p> <p>13 A So if we're talking about the same section and it can</p> <p>14 be -- one can easily get lost in the sea of words in the</p> <p>15 statute. But I'm looking at Paragraph (B), "Conditions</p> <p>16 Described." Are we in the same place?</p> <p>17 BY MR. BECHTOLD: <small>www.GeorgiaReporting.com/Schedule 404.389.1155</small></p> <p>18 Q Yes.</p> <p>19 A Okay. And your question is what -- what are</p> <p>20 the -- what are the environmental health conditions described</p> <p>21 in statute?</p> <p>22 Q Right.</p> <p>23 A Okay. So reading directly from statute, "The</p> <p>24 following conditions are described in this subparagraph:</p> <p>25 asbestosis, pleural thickening, or pleural plaques established</p>
<p style="text-align: right;">Page 23</p> <p>1 by (I), interpretation by a B-reader qualified physician of a</p> <p>2 plain chest X-ray or interpretation of a computed tomographic</p> <p>3 radiograph of the chest by a qualified physician as determined</p> <p>4 by the Secretary."</p> <p>5 There's another clause; clause II: "Such other diagnostic</p> <p>6 standards as the Secretary specifies except that this clause</p> <p>7 shall not be -- shall not apply to pleural thickening or</p> <p>8 pleural plaques unless there are symptoms or conditions</p> <p>9 requiring medical treatment as a result of these diagnoses."</p> <p>10 And then finally, there's a section for specific tumors</p> <p>11 that constitute environmental health condition also:</p> <p>12 "Mesothelioma, or malignancies of the lung, colon, rectum,</p> <p>13 larynx, stomach, esophagus, pharynx, or ovary as established by</p> <p>14 pathologic examination of biopsy tissue, cytology from</p> <p>15 bronchioalveolar lavage, or such other diagnostic standards as</p> <p>16 the Secretary specifies."</p> <p>17 Q So I -- I think you testified that the -- that the</p> <p>18 positive results screening definition was drawn from the</p> <p>19 statute, correct?</p> <p>20 A Yes.</p> <p>21 Q So if I can redirect your attention to Exhibit 301,</p> <p>22 where the positive screening result definition resides?</p> <p>23 (Witness complies.)</p> <p>24 Q The language in Section (e)(i)(2) differs from that</p> <p>25 of the statute, doesn't it?</p>	<p style="text-align: right;">Page 24</p> <p>1 A It does differ. You know, the -- the words are not</p> <p>2 exactly the same.</p> <p>3 Q And what is the difference or -- in the Exhibit 301?</p> <p>4 (Witness reviews a portion of Exhibit No. 301.)</p> <p>5 A So I think the language is little bit clearer in the</p> <p>6 NOFO but the -- the first point is just referring to B-readers</p> <p>7 of chest radiographs, chest X-rays.</p> <p>8 Q Okay.</p> <p>9 A And -- and then the second point from the NOFO is</p> <p>10 about CT scans. And so it -- it kind of builds a little bit on</p> <p>11 what's in statute and it specifies that the qualified physician</p> <p>12 is defined as being a physician from the Centers for Asbestos</p> <p>13 Related Disease for patients in the Libby area.</p> <p>14 Q Okay. And who made the determination to include the</p> <p>15 language so that physicians from the Center for Asbestos</p> <p>16 Related Disease would be a -- qualified physicians for purposes</p> <p>17 of Exhibit 301?</p> <p>18 A So that would have been the greater ATSDR team. As I</p> <p>19 mentioned earlier, there were many people on the team, very,</p> <p>20 you know, high-end -- I say high-end. You know, very</p> <p>21 experienced physicians and people in upper management that</p> <p>22 evidently thought it -- it needed to be spelled out like that</p> <p>23 for the NOFO.</p> <p>24 Q So for purposes of the -- of the NOFO, physicians at</p> <p>25 CARD are deemed to be qualified physicians?</p>

Page 25

1 A Yes.
2 (Exhibit No. 517 is introduced and identified for the
3 record.)
4 Q I'm going to hand you Exhibit 517. Do you recognize
5 what that is?
6 (Witness reviews Exhibit No. 517.)
7 A So I do.
8 Q What is it?
9 A These are emails between two of our senior physicians
10 at ATSDR that were working on preparation of the NOFO
11 back -- back in the day, circa 2010, 2011 and Brad Black.
12 Q And you are included on these emails, correct?
13 A I am. I was cc'd on at least one of these emails.
14 Q And what is the -- the second -- the attachment to
15 that email? Could you describe what that document is?
16 A So just giving it a quick scan, it appears to be
17 minutes from a meeting between, again, Dr. Falk, Dr. Antao,
18 Caroline McDonald, and Dr. Brad Black.
19 Q And what was the purposes of those meetings?
20 A So I -- I don't recall this meeting and evidently, I
21 didn't attend it but just reading the top of the meeting
22 minutes it says, "This call was held to follow up on previous
23 discussions from July of 2010 related to definitions of a
24 qualified physician for reading CT scans and the number of
25 B-readers as stated in the Affordable Care Act."

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1 Q So when you're the agency contact for the grant, what
2 does that mean your responsibilities are?
3 A So for technical assistance that would mean if anyone
4 with the program -- you know, the grantee -- had questions
5 about implementing the grant or if there were questions from
6 the community, say, or -- or anyone else regarding the grant, I
7 would be the -- the point of contact and would triage questions
8 as they came in and route them to -- you know, either I would
9 take them on myself or -- or route them back in the day, would
10 have maybe consulted with Dr. Antao, for example.
11 MR. KAKUK: Mr. Bechtold, this might be a time to
12 go off the record real quick.
13 MR. BECHTOLD: Sure.
14 MR. KAKUK: Can we go off the record?
15 THE VIDEOGRAPHER: Going off the record. The time
16 is 9:04.
17 (Off the record from 9:04 a.m. until 9:14 a.m.)
18 (On the record.)
19 THE VIDEOGRAPHER: We are back on the record. The
20 time is 9:14.
21 (Exhibit No. 307 is introduced and identified for the
22 record.)
23 BY MR. BECHTOLD:
24 Q Mr. Larson, I'm handing you what's -- Exhibit 307.
25 Could you identify what that is, please?

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1 Q So what was the conclusion that ATSDR arrived at for
2 defining a qualified physician?
3 (Witness reviews a portion of Exhibit No. 517.)
4 A So reading -- reading directly from the minutes,
5 under "CT scans," it says, "For the purposes of screening for
6 ARD, asbestos-related disease, CT readings from a qualified
7 physician will mean CT readings from physicians who are board
8 certified in pulmonary medicine or radiology or CT readings
9 from the CARD Clinic."
10 Q What's your understanding of Senator Max Baucus's
11 involvement in the language of the Affordable Care Act?
12 A Could you specify what language in the Affordable
13 Care Act you're asking about?
14 Q The language regarding the -- the Libby section of
15 the Act.
16 A So my recollection is Senator Baucus had a very deep
17 interest in the well-being and public health of people living
18 in Libby and had a direct hand in crafting that section of the
19 Affordable Care Act.
20 Q So I -- if I could direct your attention to page 20
21 of Exhibit 301?
22 (Witness complies.)
23 Q And who has ATSDR designated as the -- the agency
24 contact for this grant?
25 A That's me, Theodore Larson.

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1 (Witness reviews Exhibit No. 307.)
2 A So let's see. Page 1 is a letter to Tanis Hernandez
3 at the Center for Asbestos Related Disease and it has to do
4 with financials. That is, you know, the -- providing the
5 financial resources to fund the grant at CARD.
6 Q And does it say, "Notice of Award" on -- up there?
7 A Let's see. You are correct. This is an award letter
8 actually.
9 Q Okay. And what does that indicate?
10 A So the -- the letter is dated on August 15, 2011. So
11 this must have been the initial award of the grant to CARD back
12 when the grant was first set up.
13 Q So that applies to Exhibit 301, the -- the Notice of
14 a Funding Opportunity?
15 A Yes.
16 Q So ATSDR -- this exhibit indicates what?
17 A That the award was made so the CARD must have
18 submitted an application for the grant indicated in the NOFO,
19 and then the -- the application was accepted and the award was
20 made and this letter is notification of that award to CARD,
21 that -- that CARD had been -- would have been the recipient of
22 the grant.
23 Q And did the ATSDR deliver the funds as promised?
24 A Yes.
25 (Exhibit No. 310 is introduced and identified for the

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1 record.)

2 Q I have -- I'm going to hand you Exhibit 310. What is

3 Exhibit 310?

4 (Witness reviews Exhibit No. 310.)

5 A This is a progress report from CARD. And this -- it

6 appears to be from roughly 2012, 2013 and it may have been the

7 initial progress report. So the report begins "Brief Report of

8 Year 1 Activities to Date." So it -- so it is just a progress

9 report of what they had accomplished in Year 1 of the first

10 funding period for the grant.

11 Q How many progress reports does CARD provide to ATSDR

12 for each year for the terms of its grant?

13 A A total of five.

14 Q How are they spaced?

15 A Quarterly and one annual report.

16 MR. BECHTOLD: Let's -- let's go off the record.

17 THE VIDEOGRAPHER: Going off the record. The time

18 is 9:17.

19 (Off the record from 9:17 a.m. until 9:21 a.m.)

20 (On the record.)

21 THE VIDEOGRAPHER: We are back on at 9:21.

22 BY MR. BECHTOLD:

23 Q Mr. Larson, how many progress reports does CARD

24 provide to ATSDR each year?

25 A Five.

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1 grant?

2 A It appears to be.

3 Q So how was CARD's performance in carrying out the

4 purpose of the grant in that year?

5 MR. DUERK: Objection: Form.

6 Go ahead.

7 A So I don't specifically remember any issues from that

8 year. I do recall generally after 12 years there were some

9 startup, you know, hiccups trying to get the program stood up.

10 But nothing that sticks in my mind as a particular obstacle to

11 getting the mission accomplished under the grant. I don't

12 recall much from that year at all. I don't recall any major

13 pitfalls or issues that popped up that year.

14 (Exhibit No. 311 is introduced and identified for the

15 record.)

16 BY MR. BECHTOLD:

17 Q Okay. I'm handing you Exhibit 311. Could

18 you -- what is that document?

19 (Witness reviews Exhibit No. 311.)

20 A So this is a -- it's a pretty heavy -- you know, it's

21 a long document but it appears to be a financial progress

22 report from CARD from -- I don't see any date on it. But I'm

23 pretty sure it's from the Affordable Care Act era of -- of

24 CARD. But I am not seeing a date.

25 Q Is it -- I'll represent it's from the first year of

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1 Q And how are they spaced? Is there different

2 purposes?

3 A There's four quarterly reports and one annual report.

4 Q What's the differences between the reports?

5 A They're -- they're pretty similar actually. Just

6 the -- the numbers of screening participants changes obviously

7 every quarter and then the annual report might present some

8 more global issues or success stories for the -- you know, for

9 that year.

10 Q And what do you expect that CARD will provide you

11 in -- in the report?

12 A So again, I expect accounts of patient throughput.

13 You know, number of patients seen and their disposition.

14 Hopefully, you know, the number of people that ended up with

15 pleural plaque, for example, as identified by -- by B-reader on

16 CT by a qualified physician; their disposition.

17 www.CARD has kind of a unique low dose lung cancer
404.389.1155

18 screening program and so we monitor that pretty carefully and

19 we look for success stories like incidental findings. You

20 know, sometimes you don't see a plaque but you do see an early

21 lung cancer, for example, on a radiograph. So that's a

22 tremendous public health success story when you can catch

23 cancers early as a side impact of the screening program.

24 Q And so as -- as you review Exhibit 310, which you

25 indicated was a report from the -- from the first year of the

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1 the grant.

2 A Okay.

3 Q And what was CARD's obligation for accounting for the

4 funds that ATSDR provided?

5 A So they provide a, you know, an estimate of how the

6 money is spent by category. For example, the first category in

7 this report is personnel costs. So it has to do with salaries

8 of individual staff members. And it goes on to subcontracts

9 that have to be accounted for. CARD subcontracts out, for

10 example, a lot of the reading. They have, you know, costs

11 associated with running a medical clinic and that sort of

12 thing.

13 Q How does CARD have to justify its accounting for the

14 money from the ATSDR grant?

15 A So they -- they have a plan when they first applied

16 for the grants and usually, they stick to that plan throughout

17 the funding cycle. You know, it's -- this was a four-year

18 funding cycle for example, so year to year, if there were major

19 changes, they would have to account for it in this report. If

20 they needed a special piece of equipment or had to reallocate

21 funds from one category to another, that -- it would be

22 documented in -- in this report.

23 Q Okay. And that's a report that goes to you as the

24 contact person?

25 A I would see it but there's -- but there's actually a

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1 separate group at CDC that handles the financial side of
2 research -- of non-research grants.
3 Q Okay. I'd like to direct your attention to page 22.
4 (Witness complies.)
5 Q What is the requirement for an outside audit for
6 these grants?
7 A So I believe I -- I don't know if it's a CDC rule or
8 a federal regulation but I believe they have to have an
9 independent audit done every year of their -- of their
10 financials.
11 Q So is part of this grant that CARD Clinic has an
12 independent audit done every year?
13 A I believe so. But again, that's really not in my
14 direct wheelhouse.
15 Q Okay. So the -- the financial report would go
16 somewhere else but you would get the report of the activity
17 under the grant?
18 A Right.
19 (Exhibit No. 312 is introduced and identified for the
20 record.)
21 Q So I'm going to hand you now Exhibit 312. What is
22 that document?
23 (Witness reviews Exhibit No. 312.)
24 A This is another progress report from CARD regarding
25 the Affordable Care Act grant.

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1 this is -- it looks pretty typical for this type of report.
2 Q It was what ATSDR expected from CARD?
3 A So again, there was no -- I don't recall any issues
4 regarding this particular financial report. So I would have to
5 say no.
6 Q Okay. Is it -- it was not what ATSDR expected from
7 CARD or what ATR [sic] did expect from CARD?
8 A It was what ATSDR expected from CARD regarding this
9 grant.
10 Q Okay. Thank you.
11 (Exhibit No. 314 is introduced and identified for the
12 record.)
13 Q Now I'm going to hand you Exhibit 314. What is that
14 document?
15 (Witness reviews Exhibit No. 314.)
16 A This is another progress report from CARD regarding
17 the grant. It looks like it's from the 2014 to 2015 period.
18 Q And as you review that report, how was CARD's
19 performance in carrying out the purpose of the grant in that
20 year?
21 A Once again, I don't recall anything that was aberrant
22 from that year and so I -- I would -- I would say once again,
23 CARD did its job under the terms and purposes of the grant.
24 (Exhibit No. 315 is introduced and identified for the
25 record.)

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1 Q Okay. And this is a report that would come to you,
2 correct?
3 A Yes.
4 Q And as you review this report, how was CARD's
5 performance in carrying out the purpose of the grant in that
6 year?
7 A I don't -- so once again, I don't recall anything
8 specific from that year. So there was no bad event that
9 occurred obviously if I don't recall it. It was just another
10 year of CARD providing day-to-day screening.
11 Q Were they doing what the funding proposal required?
12 A Yes.
13 (Exhibit No. 313 is introduced and identified for the
14 record.)
15 Q Now I'm going to hand you Exhibit 313. What is that
16 document?
17 (Witness reviews Exhibit No. 313.)
18 A This is another financial report from CARD. And it
19 looks like it's from 2013.
20 Q So the secondary grant?
21 A Yes, sir.
22 Q And again, this is standard reporting for the
23 financials?
24 (Witness reviews Exhibit No. 313.)
25 A So just scanning through the report, I would say yes,

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1 Q And similar for Exhibit 315, what is that document?
2 (Witness reviews Exhibit No. 315.)
3 A This is another financial report from CARD. This is
4 from Year 4. I'm not -- I -- you know, it would have to be one
5 of the first two grant periods. I'm -- probably the first one.
6 Q Yes, the first grant period.
7 A Okay.
8 Q So was CARD spending the federal funds the way the
9 ATSDR intended?
10 A Yes.
11 Q When did the first grant period end?
12 A So it was a four-year funding period. It would have
13 ended in -- since I'm shooting from the hip and the -- the
14 funding periods don't sync with calendar years, I think it
15 probably ended in 2014.
16 (Exhibit No. 302 is introduced and identified for the
17 record.)
18 Q Now I'm handing you Exhibit 302. Could you take a
19 look at that and tell me what the document is?
20 (Witness reviews Exhibit No. 302.)
21 A This is a CDC NOFO for the second funding period of
22 the Affordable Care Act screening grant.
23 Q When the Affordable Care Act screening grant program
24 set up, what did it envision ATSDR doing?
25 A I -- I'm not sure if I understand the question.

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1 Could you rephrase?

2 Q So how much money did the Affordable Care Act set
3 aside for this screening program?

4 A 2.5 million per year. So for a four-year funding
5 cycle that would be 10 million.

6 Q Okay. So for the -- the -- for the first funding
7 opportunity, how much did ATSDR provide CARD?

8 A 2.5 million per year. Summed over four years, that
9 would be 10 million.

10 Q And for this second funding opportunity notice, what
11 were the terms of -- of that funding opportunity notice?

12 A So it's a four-year award again, just like the first
13 funding period. Again, average one year amount according to
14 the NOFO, 2.5 million per year. Total project period funding,
15 10 million.

16 Q And if you look on page 3 of that funding
17 opportunity, there's -- what is that table?

18 A So that's called a logic model and that -- that's an
19 innovation CDC mandated for -- for grants I think starting -- I
20 think we were one of the first grants that had a logic model.
21 And basically, it's a roadmap for activities and outcomes, that
22 kind of guide. They guide the grantee and also kind of guide
23 the crafting of the whole NOFO for CDC also.

24 Q So the -- what is a -- what is, like, when you
25 created this logic table for the funding opportunity, what was

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1 to get those types of services.

2 Q So follow-up care?

3 A Follow-up care. Thank you.

4 Q And in your short-term outcome in the logic thing, in
5 the logic -- now I've forgotten what --

6 A Model?

7 Q Logic model, thank you. It -- the -- it says one of
8 the things is that target audience aware of Medicaid
9 eligibility. What's that all about?

10 A So the NOFO specifies that the recipient of the grant
11 has to make -- make candidates for the program aware they may
12 be eligible for Medicare benefits. So that's one of the
13 education and outreach items mandated under the NOFO. And it
14 may -- it may -- I wouldn't be surprised if it -- it also maps
15 to the -- the Affordable Care Act language also.

16 Q So again, if you look on page 31 of Exhibit 302?
17 (Witness complies.)

18 Q Who is the -- who is the program officer for ATSDR?

19 A Once again that's me, Theodore Larson.

20 Q Okay. And again, is -- is your role different for
21 this funding opportunity than it was for the first one?

22 A I would say overall the same. I'm the main point of
23 contact if there were questions from the grantee or from the
24 community or from -- it could be any -- any interested party, I
25 guess, in the United States could -- could come to me for

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1 it based on?

2 A So I -- I had never created a logic model before and
3 no one at -- at ATSDR had done one either so we brought in an
4 independent consultant to develop it. And so basically the
5 consultant met with Dr. Antao and me at the time and we talked
6 about the -- the activities that we envisioned for the grant
7 and I believe -- my memory is a little shaky after this many
8 years but I believe the consultant actually went to Libby and
9 met with CARD personnel also to talk about the logic model.

10 Q And so the -- they worked with CARD to develop the
11 logic model? Is that fair to say?

12 A I don't recall actually.

13 Q So in the logic table -- so for example, it looks
14 like there's a -- something called a disease management
15 program. What is that?

16 (Witness reviews a portion of Exhibit No. 302.)

17 www.GeorgiaReporting.com/Exhibit 404.389.1155
18 Outcomes" in the logic model.

19 Q Yeah.

20 A And that would refer to making sure that participants
21 in -- in the screening program would get the appropriate
22 follow-up care. So if they needed, for example, supplemental
23 oxygen, that would be -- you know, they would have the links to
24 where they could get that resource. Presumably they would be
25 enrolled in Medicare and that would not be a problem for them

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1 information about the grant.

2 Q Okay. And so I -- I think you said for the logic
3 table there was something to mirror the language in the
4 Affordable Care Act?

5 A I believe so. I don't know if I can find it now but
6 I -- I believe that's right. I -- I think there's a clause in
7 there that says make -- make the community aware of potential
8 eligibility for Medicare.

9 Q And for the -- again, for the logic table on there on
10 page 2, what is a qualifying diagnosis? Where it says,
11 "Individuals with qualifying diagnosis enrolled in Medicare,"
12 was one of your short-term outcomes.

13 MR. DUERK: Objection: Foundation.

14 Go ahead.

15 (Witness reviews a portion of Exhibit 302.)

16 A So you're asking about the -- the phrase "Individuals
17 with qualifying diagnosis enrolled in Medicare?"

18 BY MR. BECHTOLD:

19 Q Correct.

20 A Can you restate the question?

21 Q So what is a -- what is a qualifying diagnosis?

22 A So --

23 MR. DUERK: Objection: Form, foundation.

24 Go ahead.

25 A -- it's the items that make up the definition for

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1 environmental exposure in the NOFO.
2 BY MR. BECHTOLD:
3 Q So if you look at page 7 of the NOFO of Exhibit 302?
4 A Oh. Thank you.
5 (Witness complies.)
6 Q So for ATSDR's purposes, what is a positive screening
7 result?
8 A So it's asbestosis, pleural thickening or pleural
9 plaques established by the criteria that we talked about
10 earlier. I don't believe the language changed for this NOFO.
11 I believe it's identical to the prior NOFO or the -- the same
12 tumors that were listed earlier. I think a difference maybe
13 for this NOFO was that we did -- we may have added positive
14 result from a fecal occult blood test. So that's -- that's a
15 screening method for colon cancer.
16 Q So as you say, it's the -- the positive screening
17 result is -- is the same as it was in the first one in Exhibit
18 301?
19 A Yes.
20 Q And -- and again, a qualifying -- qualified physician
21 was defined as a physician at CARD, correct?
22 A Yes.
23 Q So throughout the -- the terms of these grants like
24 you're -- you're the -- the contact for ATSDR for the first
25 grant. It looks like you're the contact for ATSDR for the

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1 they have; that sort of thing. And it's just a way of kicking
2 the tires and make sure that everything appears in order.
3 Q And what did you do on your site visits in -- at
4 CARD?
5 A So you meet -- usually CARD will give a presentation
6 where they summarize the annual report, most recent annual
7 report. And again, we usually get a facility walk through,
8 meet with key staff, and have the opportunity to talk to key
9 staff about their role in the program. And it can be hard to
10 get people to open up. We find success stories out of people.
11 You know, things that have really worked out well within the
12 program, that sort of thing.
13 Q What conclusions did you draw from your site visits
14 at CARD?
15 A So I -- I don't recall any morale issues. It seemed
16 like people were generally happy to be working at CARD. I
17 don't recall any -- any issues from any particular site visit.
18 Q So when you say you didn't recall any issues, that
19 means things were going as -- the way they were supposed to?
20 A So yeah, I -- I think that we humans -- and it's when
21 things go south that really sticks in your mind. And no, I
22 don't recall any issues on any -- on any site visit to CARD.
23 Q Okay.
24 (Exhibit No. 316 is introduced and identified for the
25 record.)

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1 second grant. And how long were each of these grant periods?
2 A They were four years for the first two.
3 Q So in -- in the periods of these grants, what was
4 your communication with CARD like?
5 A So I would say it was regular telephone
6 communication. I mean, not really a -- I don't think we had a
7 set meeting schedule but I would say regular or as issues
8 cropped up. Tanis Hernandez was the director, I think, for the
9 first two -- entirely for the first two grants. And she and I
10 had a great relationship. If she had an issue, she would call
11 me or vice versa. I mean, we just reached out and called each
12 other.
13 Q And how often have you made site visits to Libby?
14 A So my goal is to do one every year but there's been
15 some years where they -- where a site visit didn't get done for
16 whatever reason. My, you know, personal life got in the way of
17 getting out there on site visits. Or during COVID, we suspended
18 entirely for a couple of years and couldn't go out.
19 Q So why did you make site visits?
20 A So it's just a standard procedure at CDC to visit
21 with grantees and, you know, sometimes you just get a different
22 view of the lay of the land when you're visiting with people
23 face to face. This would never happen at CARD, I'm sure, but
24 you want to make sure that the -- they have all the staff that
25 they say they've hired, they have the facilities that they say

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1 Q And now I'm going to hand you more of those reports
2 and budgets. This is Exhibit 316. Could you tell me what that
3 is?
4 (Witness reviews Exhibit No. 316.)
5 A It's not clearly labeled but I think this is a work
6 plan. So this was CARD's written plan for -- I'm -- I'm
7 speculating -- over the next four-year funding cycle.
8 Q For the -- for the funding cycle for Exhibit 302?
9 A (Nods head affirmatively.)
10 Q You have to say yes.
11 A Yes.
12 Q And what was the plan for the second funding cycle?
13 A So where possible we try to add innovations to the
14 screening grant. Like I had mentioned earlier, CARD had
15 started a lung cancer screening program that was pretty
16 innovative. We added the fecal occult blood test. There might
17 have been some other -- a smattering of other innovations that
18 we added. I say we. CARD. CARD is the one that mostly came
19 up with those ideas and put them -- and put them to use. But
20 what was your question?
21 Q Here's another question. Was -- was CARD doing what
22 the ATSDR wanted them to do?
23 A Yes.
24 Q Was CARD spending the money the way ATSDR wanted them
25 to them to spend the money?

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1 A Yes.
2 (Exhibit No. 317 is introduced and identified for the
3 record.)
4 Q I'm now handing you Exhibit 317. Would you explain
5 what that is?
6 (Witness reviews Exhibit No. 317.)
7 A This is another financial report and it appears to be
8 from Year 1, sometime in Year 1, of the second funding cycle.
9 Q Were there any aberrations in the financials for that
10 year?
11 A I don't recall any aberrations.
12 (Exhibit No. 318 is introduced and identified for the
13 record.)
14 Q Mr. Larson, I'm now handing you Exhibit 318. Could
15 you explain what that document is?
16 (Witness reviews Exhibit No. 318.)
17 A This is the annual progress report from the
18 second -- from a year in the second funding cycle.
19 Q And based on your understanding of that report
20 was -- how was CARD's performance in carrying out the purposes
21 of the ATSDR grant in Year 1 of the second grant cycle?
22 A So again, I have no recollection of anything aberrant
23 and CARD was meeting the terms and purposes of the grant still.
24 Q All right.
25 (Exhibit No. 319 is introduced and identified for the

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1 Q And those are things that you would discuss over the
2 telephone?
3 A Yes.
4 (Exhibit No. 321 is introduced and identified for the
5 record.)
6 Q Now I'm handing you Exhibit 321. Could you explain
7 what that is?
8 (Witness reviews Exhibit No. 321.)
9 A This is a financial report from 2017. So it's
10 probably for Year 3 of the second funding cycle.
11 Q And again, and this -- this report was -- and this
12 grant year, rather, was CARD spending the funds, the federal
13 funds, the way the ATSDR intended?
14 A Yes.
15 Q Were the reports to the ATSDR's -- satisfactory to
16 ATSDR?
17 A Yes, although I don't recall anything specific that
18 we changed for this report that was -- you know, even today we
19 have ongoing conversations about ways to improve the reporting
20 quarterly and annually.
21 (Exhibit No. 322 is introduced and identified for the
22 record.)
23 Q I'm now handing you Exhibit 322. What is that
24 document?
25 (Witness reviews Exhibit No. 322.)

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1 record.)
2 Q Now I'm handing you Exhibit 319. Could you explain
3 what that is?
4 (Witness reviews Exhibit No. 319.)
5 A It's another financial report. It appears to be from
6 Year 2 of the second funding cycle.
7 Q And was CARD spending those federal funds the way
8 that ATSDR intended?
9 A Yes.
10 (Exhibit No. 320 is introduced and identified for the
11 record.)
12 Q I'm now providing you Exhibit 320. Could you explain
13 what that is?
14 (Witness reviews Exhibit No. 320.)
15 A This is an annual progress report. Again, from the
16 second funding cycle.
17 Q And when you get these reports from CARD, what do
18 you -- what do you do?
19 A I read through them, I mark them up for anything that
20 looks atypical and then I usually call CARD to talk to
21 any -- anything that I notice or -- over the years, we've
22 tweaked the format of the reports some too. And so that's
23 common feedback that I give to CARD is, you know, could we add
24 this or make this more succinct or something, some change to
25 the report.

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1 A This is an annual performance report from 2018.
2 Q So Year 3 of the second grant?
3 A I believe so.
4 Q And was CARD spending the money the way ATSDR
5 intended?
6 A This is a --
7 Q Oh, excuse me. Was CARD performing the work that
8 ATSDR intended --
9 A Yes.
10 Q -- for the grant?
11 A Yes.
12 (Exhibit No. 323 is introduced and identified for the
13 record.)
14 Q Now I'm handing you Exhibit 323. Can you explain
15 what that is?
16 (Witness reviews Exhibit No. 323.)
17 A This is a financial report for -- you know, from CARD
18 for the grant. Year 4 of the second funding cycle.
19 Q So was CARD spending federal funds the way ATSDR
20 intended in that year?
21 A Yes.
22 (Exhibit No. 344 is introduced and identified for the
23 record.)
24 Q Mr. Larson, now I'm handing you Exhibit 344. Could
25 you explain what that is?

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1 (Witness reviews Exhibit No. 344.)
2 A This is the final report from CARD for the second
3 funding cycle.
4 Q And I'd like you to note on -- on page 3 of Table 4.
5 (Witness complies.)
6 Q So this is now four years into the granting, correct?
7 A Yes.
8 Q How many screenings have they done under the grant?
9 A So from Table 4 on page 3, 3,449.
10 Q And of those, how many abnormal CTs did CARD find for
11 pleural thickening or pleural -- pleural issues?
12 A 45 percent was the percentage.
13 Q And if -- and if we look at Table 7?
14 (Witness complies.)
15 Q What does Table 7 represent?
16 A These are the outside -- or the results from outside
17 readers, B-readers and radiologists outside of CARD.
18 Q And why would CARD have outside readers?
19 A That's a requirement or, you know, a requirement.
20 It's a grant so it's a suggestion in the NOFO to have outside
21 readers. And in fact, to be consistent with the Affordable
22 Care Act language, the grantee -- let me clarify. I believe
23 the -- the NOFO actually specifies that they -- they have to do
24 outside -- they have to employ outside readers.
25 Q So, for example, if you look at Exhibit 302 again.

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1 attachments to the email on 517, prior to the formation of
2 these funding opportunities, what was the discussion for the
3 purpose of having outside readers?
4 (Witness reviews a portion of Exhibit No. 517.)
5 A So reading from this memo, these meeting minutes: "A
6 quality program that will consist of having the entire panel of
7 B-readers periodically review a random sample of radiographs
8 will be instituted in collaboration with ATSDR. This review
9 will have no influence on already established status of patient
10 benefits but will serve solely to bring consistency to the
11 screening program."
12 Q Okay. What's that mean to have no effect on already
13 established benefits?
14 A So regardless of what the readers deem an individual
15 patient to have in this review panel, if they had already been
16 dispositioned as having an abnormality, the -- the panel
17 results would not change that disposition. That person would
18 still be eligible potentially for Medicare benefits.
19 Q So I'm going to draw your attention back again to
20 Exhibit 344, the -- the Table 7.
21 (Witness complies.)
22 Q Where it said -- these are these outside readers,
23 right?
24 A Yes.
25 Q So I asked you earlier about the previous table where

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1 (Witness complies.)
2 A 302? I -- I have it right here, sir. They're out of
3 order. Got it.
4 Q On page 8, under Section G, "Quality control," what's
5 the purpose of having a panel of B-readers?
6 (Witness reviews a portion of Exhibit No. 302.)
7 A So I don't believe it's specified in the NOFO but I
8 believe the intention was to have a panel of B-readers to
9 improve consistency so they're -- if a new reader was
10 introduced to the program, maybe not familiar with such a high
11 prevalence of pleural plaque as -- as is seen in Libby, that
12 person could be brought up to speed potentially by -- by
13 working on this panel. As a panel, they look at the same image
14 and they -- the readers will debate, I guess, about what a
15 structure on a radiograph or CT scan is.
16 Q So I'm going to bring your attention back to Exhibit
17 517. It says Report look at the -- it's at the very bottom.
18 (Witness searches through the exhibits.)
19 A Further down?
20 Q At the very bottom. The very bottom.
21 A Is it this one (indicating) that's unlabeled?
22 Q It says 517 at the bottom.
23 A Ah. I was looking for a cover sheet.
24 (Witness complies.)
25 Q So if we look at the exhibit -- I mean, the

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1 CARD was making -- finding abnormal reads from CTs. And how
2 many CT reads did these outside readers do?
3 (Witness reviews a portion of Exhibit No. 344.)
4 A Let's see. Outside readings done were 2,544.
5 Q How many -- how many did the outside readers actually
6 read?
7 A Ah. Thank you. 2,481.
8 Q And how many did they find abnormal?
9 A 1,009.
10 Q And I think you -- you gave a percentage for
11 the -- for the CARD reads. And how -- what is the percentage
12 for the outside abnormal rate?
13 A 41 percent.
14 Q And then I'll draw your attention back again to Table
15 4.
16 (Witness complies.)
17 Q Did -- did CARD read the same number of CTs as the
18 outside readers?
19 (Witness reviews a portion of Exhibit No. 344.)
20 A Comparing the number of completed CTs from Table 4,
21 2,544. That's the same number as the number of CTs in Table 7,
22 2,544.
23 Q Okay. And so CARD -- it looks like CARD read 2,544
24 CTs?
25 A Yes.

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1 Q And the -- and I think you said that the -- in Table
2 7, the outsiders read 2,481, correct?

3 A I stand corrected. You are correct. The -- so the
4 number of readings is slightly lower for outside readers.

5 Q Why would that be?

6 A So the -- I do know there's a processing lag for
7 outside readings. It takes time. I -- I believe at one point
8 at least the radiographs were being sent by courier and
9 maybe -- I believe that it was the same thing for the CT scans.
10 That's all digital but I think they had to burn it to CD and
11 ship it by courier. The B-readers are doing this under
12 contract but they have a -- a clinical day job also so it takes
13 them some time, in some cases, to get -- to get to the readings
14 for the program. And so there could be a lag in getting the
15 results back. And that might be what you're seeing here.

16 Q So it basically looks like there's -- 98 percent of
17 them get read but for one reason or another, time lag or
18 whatever --

19 A Right.

20 Q -- they don't all get read?

21 A Yes.

22 Q I understand. All right. I'm going to draw your
23 attention to page 19 of Exhibit 344.

24 (Witness complies.)

25 Q Near the middle of the page there's a heading that

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1 find one of the structures that we talked about earlier;
2 asbestosis or pleural plaque. One would not necessarily need
3 both concurrence or the same result from both the qualified
4 physician at CARD and the outside reader. So one -- I think
5 what this is implying is that some -- some people are getting
6 an outside reading, a positive result on an outside reading
7 that was not detected by the qualified physician but they still
8 qualified for Medicare benefits.

9 Q Because of that outside read?

10 A Yes.

11 Q Is it a concern to -- or was it a concern to ATSDR
12 that the -- that there were discordant findings on these CT
13 reads from CARD physicians and outside physicians?

14 A So it was -- I would say it was notable but
15 not -- not surprising.

16 Q And why is that?

17 A ATSDR knew from previous rounds of screening that
18 pleural plaques are hard -- they can be very difficult to
19 diagnose and it's not unusual even among -- you know, in
20 the -- in the initial round of screening that we did, we had
21 two or three B-readers look at each test radiograph. And it
22 was not unusual to have them disagree. And we've done other
23 studies on CT scans in Libby and the same thing. It's
24 not -- it's not unusual to have radiologists disagree about
25 what's on a patient's CT scan.

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1 says, "Dissension Between CARD Diagnosis Rate and Outside
2 Reader Diagnosis Rate."

3 This is, I think you testified, a report for the first
4 four years of the grant funding, correct?

5 A Uh-huh (affirmative).

6 Q What's your understanding of this dissension rate?

7 A So I'm reading to see how the term is used in this
8 report.

9 (Witness reviews a portion of Exhibit No. 344.)

10 A So it -- it looks like they're maybe explaining the
11 disconnect, the apparent disconnect, why some people are not
12 clinically diagnosed at CARD but are eligible to receive
13 Medicare benefits. And the reasons for that appear to be based
14 on an outside reader result for -- for a CT -- for a chest
15 X-ray or a CT scan. Or perhaps they had another eligible
16 asbestos-related cancer diagnosis from that list that I read
17 earlier from the NOFO on Schedule
18 Q And what's ATSDR's understanding of eligibility for
19 Medicare benefits through this screening grant?

20 MR. DUEK: Objection: Foundation, form.

21 Go ahead.

22 A So as specified in the NOFO, a person could get a
23 positive diagnosis several ways. One is to have a qualified
24 physician at CARD detect something on a CT scan. Another way
25 would be to have an outside B-reader or an outside radiologist

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1 (Exhibit No. 522 is introduced and identified for the
2 record.)

3 Q I'm going to hand you Exhibit 522. What is that
4 document, Mr. Larson?

5 (Witness reviews Exhibit No. 522.)

6 A This is an email from Tracy McNew at CARD to -- the
7 to line is to -- I believe these are the expert outside
8 radiologists that the program used -- used or uses.

9 MR. DUEK: Can I see a copy?

10 MR. BECHTOLD: Can we go off the record for a second,
11 please? Thanks.

12 THE VIDEOGRAPHER: We're going off the record. The
13 time is 10:10.

14 (Off the record from 10:10 a.m. until 10:22 a.m.)

15 (On the record.)

16 THE VIDEOGRAPHER: We are back on the record at
17 10:22.

18 BY MR. BECHTOLD:

19 Q So Mr. Lawson, what is Exhibit 522?

20 A This is an email from Tracy McNew at CARD to the -- I
21 believe the -- the outside CT readers that were used at the
22 time of the email in 2015.

23 Q And you're copied on this email, correct?

24 A Yes.

25 Q Why were you copied?

<p style="text-align: right;">Page 57</p> <p>1 A Because I'm the -- probably because I'm the project</p> <p>2 officer for the grant.</p> <p>3 Q Okay. In the -- in the email Ms. McNew indicates</p> <p>4 that there's a peer review call scheduled. What is a peer</p> <p>5 review call?</p> <p>6 A That's the -- the panel of readers noted in the NOFO.</p> <p>7 Q So you're referring to, for example, Exhibit 302 at</p> <p>8 page 8?</p> <p>9 A Yes.</p> <p>10 Q And what is -- what is that -- that panel for?</p> <p>11 A Again, it's for trying to improve, I think, the</p> <p>12 consistency of the readers. Correction. The consistency of</p> <p>13 the readings done by the readers.</p> <p>14 Q Okay. So the consistency of the readings done by the</p> <p>15 readers. So how -- how do -- what's the -- what's the process?</p> <p>16 How does that happen?</p> <p>17 A So they -- they look at the same image and they have</p> <p>18 extended conversation about whether or not they would classify</p> <p>19 a particular structure on a chest X-ray or CT scan as, for</p> <p>20 example, pleural plaque.</p> <p>21 (Exhibit No. 518 is introduced and identified for the</p> <p>22 record.)</p> <p>23 Q I'm going to hand you Exhibit 518. Could you tell me</p> <p>24 what that is?</p> <p>25 (Witness reviews Exhibit No. 518.)</p>	<p style="text-align: right;">Page 58</p> <p>1 A This is email from my former supervisor, Vinicius</p> <p>2 Antao, to me and Tanis Hernandez at CARD.</p> <p>3 Q Okay. Could you look through the body of that</p> <p>4 exhibit?</p> <p>5 (Witness complies.)</p> <p>6 Q So this is an email from August of 2011, correct?</p> <p>7 A Yes.</p> <p>8 Q So what's going on here?</p> <p>9 A So I don't recall this email chain but it's</p> <p>10 not -- it's nothing surprising. It looks like Tanis at</p> <p>11 CARD -- if you go back to the -- the bottom of the email chain,</p> <p>12 it looks like she -- it looks like she was reaching out to</p> <p>13 ATSDR to -- to identify potential outside readers for their</p> <p>14 program and to -- there's a lot of text on page 1 of this</p> <p>15 chain. It looks like we were getting down into the details of</p> <p>16 power calculations and that kind of thing.</p> <p>17 Q Okay. So what was your role in selection of the</p> <p>18 people on the -- on the -- the panel?</p> <p>19 A So I -- I had done some studies as an investigator</p> <p>20 and had -- I had worked with different readers. And so I have</p> <p>21 a list on page 2 of readers I thought would be good candidates.</p> <p>22 And these are all folks that work in academia. They're</p> <p>23 physicians at the medical school, at their respective medical</p> <p>24 schools, and I was proposing them as candidates that CARD might</p> <p>25 consider for their program.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Okay. And then on page 1 of 518, in the -- an email</p> <p>2 authored by you in this chain, what are you talking about</p> <p>3 there?</p> <p>4 (Witness reviews a portion of Exhibit No. 518.)</p> <p>5 A So it appears I'm proposing a sampling -- a sampling</p> <p>6 strategy to get chest radiographs and CT scans for the -- for</p> <p>7 the outside reader panel. And it looks like I'm proposing</p> <p>8 just, like, a random sample; go in and grab random people for</p> <p>9 that -- for that panel.</p> <p>10 Q And do you know how -- how did CARD eventually select</p> <p>11 these -- the -- the scans for the panel?</p> <p>12 A I don't recall exactly. I -- I believe they may have</p> <p>13 started off with a random sample but I think at some point they</p> <p>14 may have intentionally tried to identify chest X-rays and CT</p> <p>15 scans that were difficult to interpret and to -- to make more</p> <p>16 of a challenge for the readers.</p> <p>17 Q Or identify it.</p> <p>18 (Exhibit No. 506 is introduced and identified for the</p> <p>19 record.)</p> <p>20 Q I'm now going to hand you what's been marked as</p> <p>21 Exhibit 506. What is that document?</p> <p>22 (Witness reviews Exhibit No. 506.)</p> <p>23 A So it's not labeled but it -- to me it looks like</p> <p>24 it's the results from said outside reader panel. I believe</p> <p>25 these are CT readers and it shows -- I believe -- again, it's</p>	<p style="text-align: right;">Page 60</p> <p>1 not really labeled clearly but it appears to be how each reader</p> <p>2 made their respective calls for parenchymal and plural</p> <p>3 abnormalities on a given CT scan.</p> <p>4 Q And this is something that -- that you received</p> <p>5 regularly from CARD, correct?</p> <p>6 A I -- I have received these. I don't know that I've</p> <p>7 seen one recently but -- but I have received these in the past.</p> <p>8 Q And as you look at Exhibit 506, do you note that</p> <p>9 there's -- what -- what do you note about the agreements</p> <p>10 between these three CT readers and these various scans?</p> <p>11 (Witness reviews Exhibit 506.)</p> <p>12 A The one dated -- to take -- I think you'd want to</p> <p>13 compare, for example, the pleural columns, the three different</p> <p>14 readers looking at the same image, I'm thinking. And then see</p> <p>15 how the results agree or not. I think the reason why I don't</p> <p>16 typically see the data in this format anymore is that there's</p> <p>17 a -- a new summary statistic that we -- summary statistics that</p> <p>18 we use in the -- in the monthly and annual reports that are</p> <p>19 more concise and easier to interpret.</p> <p>20 Q Okay.</p> <p>21 A I -- it looks like these are mostly noes and there's</p> <p>22 a -- I -- I do see a few places where the readers disagree.</p> <p>23 (Exhibit No. 507 is introduced and identified for the</p> <p>24 record.)</p> <p>25 Q And I'm going to hand you Exhibit 507. Again, what</p>

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1 is this document?

2 (Witness reviews Exhibit No. 507.)

3 A So this is -- this appears to be the results from

4 another CT reader panel. And there's a little more information

5 on it. I think the emph, E-P -- or E-M-P-H in parentheses is

6 emphysema. And again, I think you can see places where there

7 was agreement and disagreement in this table.

8 Q Would you agree that these -- that Dr. Kanne, Dr.

9 Lynch, and Dr. Meyer are all highly expected -- experienced

10 radiologists?

11 A They are.

12 Q And you agree that they -- as you testified, both

13 agree and disagree on reading these CTs, correct?

14 A Yes.

15 Q Would -- would you expect a discordance in agreement

16 to change over time?

17 A So, you know, we're -- we're dealing with humans

18 looking at chest radiograph or CT on a screen. There's shades

19 of gray and it's not surprising that on -- on the day -- on the

20 day that this panel was looking at it, some -- you know, some

21 of the readers agreed, some disagreed. And we've done studies

22 where we looked at within reader agreements of this. You take

23 the same reader, they look at the same image after some amount

24 of time, a washout period, sometimes you get a different

25 result. It's just a -- a way of illustrating how difficult it

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1 statistics pretty quickly but it's a -- it's a way of

2 measuring, like, agreement succinctly. And so the first kappa

3 result is .619. It's not a percentage or a proportion.

4 It's -- it's just a way of ranking agreement. And there's

5 different interpretations for kappas. Shooting -- I'm shooting

6 from the hip, but I would say that's -- that's not bad. That's

7 better than average probably.

8 (Exhibit No. 523 is introduced and identified for the

9 record.)

10 Q Okay. I'm handing you what's -- Exhibit 523. What

11 is that document?

12 (Witness reviews Exhibit No. 523.)

13 A These are the results from another -- what CARD calls

14 a peer review. It's the -- it's the panel of outside readers

15 for radiographs and HRCT scans.

16 Q So who is -- who conducted this analysis?

17 A This is Dr. Curtis Noonan, who is on contract with

18 CARD.

19 Q Why does CARD have Dr. Noonan do this analysis?

20 A So he's a subject matter expert as it relates to

21 doing kappa statistics. And I'm speculating but I think CARD

22 just realized, you know, the -- the -- where their knowledge

23 ends and wanted to bring in an expert.

24 Q And these are statistics that -- that CARD provides

25 to you, correct?

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1 is to classify a lot of these types of abnormalities.

2 Q So it's no surprise then that, for example, Dr. Brad

3 Black's readings of CTs would be different from a different

4 doctor who -- who would use these CTs?

5 MR. DUERK: Objection: Foundation.

6 Are we talking about Exhibit 507? I don't see

7 Black's reads here.

8 BY MR. BECHTOLD:

9 Q Go -- go ahead and answer.

10 A So Dr. Black is another reader in a way. And no, it

11 would not be surprising to see his results agree and disagree

12 with these two readers within this table.

13 Q Okay.

14 (Exhibit No. 505 is introduced and identified for the

15 record.)

16 Q I'm -- Mr. Larson, I'm handing you what's been marked

17 as Exhibit 505. Please take a look at that document, and.

18 (Witness reviews Exhibit No. 505.)

19 A So these -- again, this appears to be results from a

20 reader panel like we were talking about in the NOFO. And this

21 is a little more sophisticated way to present the data. And

22 they have some measures of reader agreement, including a kappa

23 statistic.

24 Q What's a kappa statistic?

25 A So I get out of my -- out of my knowledge of

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1 A Yes.

2 Q So this is something that CARD provides to you

3 regularly?

4 A Yes.

5 Q And something that ATSDR has been aware of?

6 A Yes.

7 Q So what was ATSDR's role in involving Dr. Noonan in

8 these statistical analysis?

9 A So ATSDR is a consumer of Dr. Noonan's output, like

10 in this table -- in these tables. And so he's an expert. We

11 did not advise him on the approach, the statistical approach,

12 to be used. I think he came -- he reached that conclusion on

13 his own and I'm not sure if I'm -- if I'm getting at your

14 question.

15 Q So what's the purpose of having this statistical

16 analysis done?

17 A So recall earlier exhibits, the -- you're looking at

18 a table with was there agreement, yes or no. It can be hard to

19 take in a lot of records, a lot of patients in a single table.

20 This is a much more succinct way to look at reader agreement.

21 (Exhibit Nos. 508, 509, 510, 511, 512, and 514 are

22 introduced and identified for the record.)

23 Q Okay. So I'm going to hand you what has been marked

24 as Exhibits 508, 509, 510, 511, 512, and 514. Will you take a

25 look at those, please?

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1 (Witness complies and reviews Exhibit Nos. 508 through 512
2 and Exhibit No. 514.)
3 Q And what are those documents?
4 A These are tables of outside reader panel results.
5 Q Okay. And from what years?
6 A So the dates that the CTs were taken range from 2013
7 to 2019.
8 Q And as you look at the -- the discordant rates
9 between those ones taken from 2013 compared to the ones from
10 2019, is there a difference in the discordance rate for those
11 various readers?
12 A Can you ask the question one more time, please?
13 Q What's the discordance rate in the various readings
14 compared from the 2013 -- the early ones, 2013, compared to the
15 last one from 2019?
16 A So these tables are not summarized by
17 discordant -- discordancy rate. I do see discordancy, I see
18 agreement but there's not, like, a summary statistic that
19 would -- I mean, that would take some time, I think, to
20 calculate that.
21 Q Okay. And if you look at Exhibit 505 --
22 (Witness complies.)
23 Q -- does that help you in that analysis?
24 A Yes, so that's where you would see -- let's see. So
25 the -- yeah, these do present kind of summary -- summaries of

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1 trend in the statistics.
2 Q So what does that mean in your life?
3 A It means there's remaining inconsistency in the
4 readers. I mean, there's not perfect agreement in the readers
5 and there does not appear to be giving it the eyeball check.
6 I'm not seeing an improvement in time.
7 Q Does this reinforce your earlier testimony
8 that -- that the CT readers have a great degree of
9 inconsistency?
10 MR. DUERK: Objection: Form.
11 Go ahead.
12 A It may -- it may indicate inconsistency of the CT
13 readers.
14 BY MR. BECHTOLD:
15 Q What do you think it indicates?
16 A So I'd want to know what the makeup of the CT scans
17 for each panel were. I mean, were they -- were they random
18 samples or were they -- again, I believe at one point CARD was
19 intentionally selecting kind of difficult scans and radiographs
20 to read and so that -- that would -- you know, one would expect
21 that with CT scan, for example, that's not straightforward to
22 classify, that would result in greater inconsistency between
23 the readers.
24 Q Okay. So it's -- it's your understanding
25 that -- that some are random and -- and some of the -- of the

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1 the individual readings for -- for a given patient. These are
2 much more succinct and easier to digest.
3 Q And what does the -- what does the table on page 1 of
4 505 indicate to you about the -- the rate of discordance from
5 beginning -- at the beginning of the grant in 2011 to the -- it
6 looks like the eleventh year of the grant?
7 A So with regard to kappa, I'm not seeing a clear
8 trend.
9 Q Would it be fair to say that the -- the readings go
10 all over the place?
11 MR. DUERK: Objection: Form.
12 Go ahead.
13 A So there's a statistical test for trends that could
14 be attempted here, but to my -- just giving it the eyeball
15 check, I'm not seeing a clear improvement or worsening of
16 kappa.
17 BY MR. BECHTOLD: www.GeorgiaReporting.com/Schedule
404.389.1155
18 Q So when there's -- when there's no improvement or
19 worsening of kappa, what does that mean?
20 A So there's no trend. I mean, the -- the numbers
21 appear to be trending down and then they're going up again. So
22 there's no -- there's no clear trend. They do differ from
23 reading panel to reading panel but there's not a -- there's no
24 trend. If I look at the other statistics, they're hard to
25 interpret but kind of the same thing; not a clear -- a clear

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1 scans chosen for the peer review are random and some are not?
2 A I really don't remember. From that earlier email
3 I -- that I couldn't remember either, I had -- I had
4 recommended a random sample and I think that's a reasonable
5 approach still. Even with a random sample there might be some
6 panel meetings where the -- where the images were just tougher
7 by -- by chance, so.
8 Q Okay. And is the idea behind the quality control
9 provision of the funding opportunities, is it to -- is it to
10 eliminate discordant reads?
11 A I don't think it's possible to eliminate discordancy
12 but I've heard the readers that attend these panels found them
13 very beneficial and they didn't always agree at the end of the
14 meeting, but they felt that they were working towards better
15 consistency in the readings.
16 Q What's the discordancy read rates between CARD
17 doctors and B-readers?
18 A It's summarized in the quarterly and annual reports.
19 Q So it's something that ATSDR is familiar with?
20 A Yes.
21 Q Is it something ATSDR is concerned about?
22 A So I think it's notable but again, it's not
23 surprising. So I wouldn't say I'm -- you know, my personal
24 opinion is I'm not worried about it but it is something to keep
25 an eye on.

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1 Q Why are you not worried about it?

2 A So again, from my experience, expert readers reading

3 images from Libby, that is chest X-rays and CT scans, tend to

4 disagree a lot especially about pleural plaque.

5 Q All right. I'm going to clean up your paper mess.

6 A Okay.

7 (Exhibit No. 303 is introduced and identified for the

8 record.)

9 Q And I'm handing you Exhibit 303. What is Exhibit

10 303?

11 (Witness reviews Exhibit No. 303.)

12 A This is the NOFO for the current funding cycle from

13 2019.

14 Q Is there anything different about the -- the current

15 funding cycle as opposed to the prior two?

16 A The NOFO is essentially the same. There may have

17 been edits requested by reviewers as it went through the

18 process of getting stood up. But in essence, it's the same as

19 the prior two NOFOs.

20 Q So it has that same logic table?

21 A Yes.

22 Q It has that same -- you're identified as the program

23 officer again on page 39?

24 (Witness reviews a portion of Exhibit No. 303.)

25 A Yes.

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1 A This is a Notice of Award from CDC to CARD for the

2 2019 NOFO.

3 Q So that's -- that's the -- how the ATSDR notified

4 CARD that they had been awarded the grant?

5 A That's how CDC notifies.

6 Q Oh, CDC. Excuse me.

7 (Exhibit No. 324 is introduced and identified for the

8 record.)

9 Q I'm going to hand you what's been marked as Exhibit

10 324. If you could explain what that is?

11 (Witness reviews Exhibit No. 324.)

12 A This appears to be CARD's work plan submitted as part

13 of the application process for the 2019 funding cycle.

14 Q And just in -- to summarize, what -- what was CARD's

15 work plan?

16 A So at its core it's the same as the two prior work

17 plans. Again, there are some innovations as he mentioned on

18 page 2. For example, their lung -- lung cancer screening

19 program. And -- but again, at its core it's -- it's

20 essentially the same work plan as -- as for the two prior

21 funding periods.

22 Q So why did ATSDR grant CARD this third group of

23 funds?

24 A ATSDR felt there was still public health work to be

25 done in Libby regarding -- regarding screening for asbestos

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1 Q It has that same positive screening definition on

2 page 11?

3 A Yes.

4 Q And it has that same -- it has that same disease

5 management provision in the logic table as before?

6 (Witness reviews a portion of Exhibit No. 303.)

7 A Yes.

8 Q It has that same notion of the -- of -- of how people

9 qualify for Medicare in the logic table?

10 MR. DUERK: Objection: Foundation, form.

11 Go ahead.

12 A Yes.

13 BY MR. BECHTOLD:

14 Q So would you characterize this essentially as a

15 continuation of the first two grants?

16 A Yes.

17 Q Why was it extended for five years instead of four?

18 A That was a recommendation from a CDC reviewer. It's

19 just less burdensome on the bureaucracy at CDC. It reduces

20 their load by 25 percent by going to five years.

21 (Exhibit No. 309 is introduced and identified for the

22 record.)

23 Q And I'm handing you what's been marked as Exhibit

24 309. What is that?

25 (Witness reviews Exhibit No. 309.)

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1 related disease there. And stood up this third funding period.

2 Q And was ATSDR satisfied with CARD's performance under

3 the two prior grants?

4 A Yes.

5 Q Was ATSDR satisfied with the way CARD had spent the

6 federal funds granted to them?

7 A Yes.

8 (Exhibit No. 325 is introduced and identified for the

9 record.)

10 Q I'm handing you what's marked as Exhibit 325. Could

11 you explain what that is?

12 (Witness reviews Exhibit No. 325.)

13 A This is the financial plan for the third funding

14 cycle of the ACA grant.

15 Q And is ATSDR satisfied with the financial plan?

16 A Yes.

17 (Exhibit No. 326 is introduced and identified for the

18 record.)

19 Q I'm handing you what's been marked -- I'm handing you

20 Exhibit 326. Can you explain what that is?

21 (Witness reviews Exhibit No. 326.)

22 A This is an annual report from CARD for -- it looks

23 like it's the first quarterly -- quarterly report under the

24 third funding cycle.

25 Q Okay. And is -- based on that report is -- is CARD

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1 performing under the grant satisfactorily?

2 A Yes.

3 Q Spending the money as intended by the ATSDR?

4 A Yes.

5 Q Fulfilling the purposes of the statute?

6 A Yes.

7 (Exhibit No. 327 is introduced and identified for the

8 record.)

9 Q I'm now handing you Exhibit 327. What is that

10 document?

11 (Witness reviews Exhibit No. 327.)

12 A This is CARD's financial plan for the grant. It's

13 not well labeled. I'm not sure what era it's from.

14 (Witness continues review of Exhibit No. 327.)

15 A It's from -- it looks like the period 2019 to 2020.

16 Q So Year -- Year 2 -- Year 2 of the grant?

17 A Yes.

18 Q Was the budget approved by ATSDR?

19 A Yes.

20 (Exhibit No. 328 is introduced and identified for the

21 record.)

22 Q I'm now handing you what's been -- Exhibit 328.

23 Could you explain what that is?

24 (Witness reviews Exhibit No. 328.)

25 A This is a progress report from CARD. Appears to be a

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1 expected?

2 A Yes.

3 Q Has it been performing as intended?

4 A Yes.

5 Q Is ATSDR satisfied with the performance of CARD under

6 the grant?

7 A Yes.

8 (Exhibit No. 331 is introduced and identified for the

9 record.)

10 Q I'm now handing you Exhibit 331. Could you explain

11 what that document is?

12 (Witness reviews Exhibit No. 331.)

13 A This is CARD's financial plan. It looks like it was

14 the plan from the outset of the, you know, the whole funding

15 cycle.

16 Q So has CARD been spending the money as intended under

17 this funding cycle?

18 A Yes.

19 Q As ATSDR intended?

20 A Yes.

21 (Exhibit No. 341 is introduced and identified for the

22 record.)

23 Q Now I'm handing you Exhibit 341. What is that?

24 (Witness reviews Exhibit No. 341.)

25 A This is a CDC Notice of Award to CARD for the period

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1 quarterly report from September 2020 to February 2021.

2 Q Again, is CARD performing as expected under the

3 grant?

4 A Yes.

5 Q Is CARD performing as ATSDR determined satisfactory?

6 A Yes.

7 (Exhibit No. 329 is introduced and identified for the

8 record.)

9 Q I'm handing you Exhibit 329. Could you tell us what

10 that document is?

11 (Witness reviews Exhibit No. 329.)

12 A This is the financial plan from CARD to CDC. It

13 appears to be the third year for the current funding cycle.

14 Q Okay. And has CARD been spending the money

15 appropriately?

16 A Yes.

17 Q As intended by ATSDR?

18 A Yes.

19 (Exhibit No. 330 is introduced and identified for the

20 record.)

21 Q I'm handing you Exhibit 330. What is that?

22 (Witness reviews Exhibit No. 330.)

23 A This is another progress report from CARD for the

24 period September 2021 to February 2022.

25 Q And has CARD been performing under the grant as

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1 September 2021 to August 2022.

2 Q So is this a supplemental award?

3 (Witness continues review of Exhibit No. 341.)

4 A This does include a supplemental -- this does include

5 supplemental funding.

6 Q So what were the circumstances that would provide

7 that ATSDR would give CARD supplemental funding?

8 A So this was at the height of the COVID-19 pandemic

9 and CARD's patient population already has compromised pulmonary

10 systems and CARD did not have the facilities to protect its

11 patients from contracting COVID-19 while anticipating its

12 screening activities. And so one part of the supplemental

13 funding was to bring CARD up to speed with regard to having

14 engineering controls in their facility to protect patients.

15 (Exhibit No. 347 is introduced and identified for the

16 record.)

17 Q Okay. I'm handing you Exhibit 347. Can you tell us

18 what that is?

19 (Witness reviews Exhibit No. 347.)

20 A This is CARD's work plan for the supplemental

21 funding.

22 Q Okay. Was ATSDR aware of Burlington Northern Santa

23 Fe's lawsuit when ATSDR gave CARD a supplemental \$1 million?

24 MR. DUERK: Objection: Form.

25 Go ahead.

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1 A I don't recall. It was -- I think I may have vaguely
2 been aware of it but really, the supplemental funding had
3 nothing to do with any pending litigation with CARD. It was
4 more to get it -- I was concerned that CARD's program would be
5 knocked out by COVID essentially. They had no patients turning
6 out to be screened and I had concerns also that staff would be
7 leaving and that institutional knowledge would be gone forever.
8 You know, those -- those sorts of things. I -- I guess I had
9 been aware in years leading up to the COVID-19 pandemic that
10 there was litigation or a threat of litigation in the
11 background but it -- it was not prominent on my radar.
12 BY MR. BECHTOLD:
13 Q In other words, that wasn't a concern of ATSDR
14 regarding funding?
15 A That's correct.
16 Q Was that because you were confident in CARD's
17 performance under the grant?
18 A Yes.
19 Q At any point in these three grant periods, what
20 concerns did you have, if any, about how CARD was spending the
21 federal money?
22 A So I may have had a minor concern in the first
23 funding period regarding CARD's inability to spend the full
24 amount and sometimes that can make it hard to justify funding
25 at the same level in subsequent years. And so I would say that

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1 on.
2 Q Okay. So is research any part of these grants?
3 A These are non-research grants but it's possible that
4 the data could be repurposed and used in research.
5 Q And did that happen?
6 A So you could see in the previous email that I was
7 working towards using some of CARD's data for an analysis.
8 The -- the email in my hands from Dr. Szeinuk I believe was
9 also using the -- the CARD's patient population under a
10 different -- this is a -- under a research grant not under the
11 Affordable Care Act, I believe.
12 Q What's the benefit of -- of using the data generated
13 through these grants in research?
14 A So a research question may indirectly or directly
15 benefit an individual CARD patient. Maybe we can answer some
16 scientific question about how they're getting sick or maybe
17 identifying a disease earlier than were identified previously.
18 Those sorts of basic research questions may be answered by
19 looking at the CARD's patient population data.
20 Q Is that something that ATSDR encourages?
21 A So in the past I have been encouraged to work on
22 research questions that have the potential to benefit a public
23 health situation like in Libby.
24 (Exhibit No. 337 is introduced and identified for the
25 record.)

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1 was my only -- the only concern that comes to mind over the
2 history of the grant.
3 Q How would you rate CARD's compliance with the
4 requirements of the grant?
5 A Very good.
6 Q So have the purposes of the -- of the federal grants
7 been served?
8 A Yes.
9 (Exhibit No. 521 is introduced and identified for the
10 record.)
11 Q I'm handing you Exhibit 521. What is Exhibit 521?
12 (Witness reviews Exhibit No. 521.)
13 A This is an email from me to Dr. Black from 2014. And
14 in it, it appears I'm requesting data from CARD's patient
15 population for an analysis that I was working on. I don't
16 recall this analysis specifically but it looks like I was
17 trying to put together an abstract for a scientific conference.
18 (Exhibit No. 524 is introduced and identified for the
19 record.)
20 Q I'm also going to hand you what's been -- Exhibit
21 524. Could you explain what that is?
22 (Witness reviews Exhibit No. 524.)
23 A So this is an email chain started by Dr. Jaime
24 Szeinuk to me notifying me of his success in publishing a
25 manuscript that he had collaborated with Dr. Black and others

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1 Q I'm now handing you Exhibit 337. Mr. Larson, could
2 you tell us what that document is?
3 (Witness reviews Exhibit No. 337.)
4 A So this -- it's -- it's an email chain starting with
5 me sending an email to my supervisor, Kevin Horton. So I was
6 noting to him in 2015 -- I didn't realize it been that long ago
7 but -- evidently HHS Office of the Inspector General was
8 scrutinizing CARD's work back then. So I was notifying my
9 supervisor about that conversation and then the email chain
10 goes on -- let's see. And there are a lot of people copied on
11 it at the time, I guess.
12 (Exhibit No. 338 is introduced and identified for the
13 record.)
14 Q Okay. I'm handing you 338, Exhibit 338. What is
15 that?
16 (Witness reviews Exhibit No. 338.)
17 A So this is an email from me to Ashley Collins. I
18 don't remember this person specifically but it appears she's an
19 HHS OIG investigator and I had furnished the names of the
20 outside readers being used by CARD for their program.
21 Q Okay. What is HHS OIG? What's that stand for?
22 A So HHS is the Department of Health and Human
23 Services, under which CDC and ATSDR fall. And then OIG is
24 their Office of the Inspector General that does internal
25 investigations regarding grants and that sort of thing.

<p style="text-align: right;">Page 81</p> <p>1 Q So what triggered the 2015 Office of Inspector 2 General investigation? 3 A So I didn't -- I did not specify it in this email 4 and -- 5 (Witness reviews Exhibit 337.) 6 A -- looking at the previous email chain, it was 7 regarding a complaint that OIG had received that physicians in 8 Libby may be over diagnosing asbestos related disease. 9 Q So physicians in Libby, that means the CARD 10 physicians? 11 (Witness continues review of Exhibit 337.) 12 A So my -- my direct words were "complaints from 13 physicians in Libby," so I'm assuming I meant physicians 14 physically located in Libby, Montana. 15 Q Had made complaints about -- 16 A About CARD. 17 Q Over diagnosing? 18 A (Nods head affirmatively.) 19 Q Okay. So what was the outcome of this 2015 Office of 20 Inspector General investigation? 21 MR. DUERK: Objection: Foundation. 22 MR. KAKUK: I'm going to object here as well. 23 I's a good opportunity to put on the record the issue 24 that we might have if this goes outside -- I believe this 25 whole line of questioning is outside the scope of the</p>	<p style="text-align: right;">Page 82</p> <p>1 deposition. 2 You can go ahead and answer, Mr. Larson. 3 A So my memory of what happened, I think, kind of 4 trails off. I believe it was not pursued to the end. You 5 know, CARD was never -- that -- that was the outcome. 6 CARD -- CARD was never -- never accused or had to face charges, 7 I guess, of over diagnosing. 8 BY MR. BECHTOLD: 9 Q What's your understanding of CARD's diagnostic 10 methodologies for asbestos related diseases? 11 A So they -- CARD, just like as specified in the NOFO, 12 they use chest CT scans as part of their diagnostic procedures. 13 They also do spirometry and pulmonary function testing, which 14 are well recognized in -- in treating and diagnosing patients 15 exposed to asbestos. And in addition they administer a 16 standardized survey to get the patient's potential exposure 17 history. <small>GeorgiaReporting.com/Schedule 404.389.1155</small> 18 Q Do -- do CARD physicians apply American Thoracic 19 Society guidelines in clinically diagnosing asbestos related 20 disease? 21 A So I have read those guidelines. I'm not intimately 22 familiar with them. I -- I do believe there are many elements 23 in the ATS guidelines that CARD employs but they are not 24 specified in the NOFO or the Affordable Care Act statute. 25 Q So is -- so is it -- what is ATSDR's understanding of</p>
<p style="text-align: right;">Page 83</p> <p>1 individuals who are diagnosed by CARD with an asbestos related 2 disease eligibility for Medicare? 3 A So if -- again, a patient meets those criteria 4 specified in the NOFO they would be eligible for Medicare. 5 That is, if -- if they're a qualified physician at CARD, sees 6 asbestosis, pleural thickening or plural plaque, a person would 7 be deemed eligible for Medicare. 8 Q Similarly, what's ATR's -- ATSDR's position regarding 9 the eligibility for Medicare benefits of those individuals 10 identified by an outside reader to have an abnormality 11 associated with an asbestos-related disease? 12 MR. DUERK: Objection: Form, foundation, and 13 relevance. 14 A Similar response. It's specified the NOFO. Outside 15 readers may -- a B-reader may identify a structure on a chest 16 X-ray as asbestos related or on a CT scan. 17 BY MR. BECHTOLD: 18 Q So what's the -- what's the purpose of -- of 19 these -- of the ACA provisions as -- as transferred -- as -- 20 rather, as designated in these three funding request proposals? 21 MR. DUERK: Objection: Form, foundation, 22 relevance. 23 Go ahead. 24 A Can you restate the question, please? 25 BY MR. BECHTOLD:</p>	<p style="text-align: right;">Page 84</p> <p>1 Q What's the -- what's the purpose of this -- what is 2 ATR's -- ATSDR's position on why -- why this provision in the 3 Affordable Care Act? Why does it exist? 4 MR. DUERK: Same objections. Form, foundation, 5 relevance. Calls for a legal conclusion. 6 Go ahead. 7 A So the -- you're talking about the definition for 8 asbestos related disease in the statute and then the NOFO, 9 why -- why are they there? 10 BY MR. BECHTOLD: 11 Q Yeah, why are they there? 12 MR. DUERK: Same objections. 13 Go ahead. 14 A So it's to -- it's to make people -- allow people in 15 Libby that may have been exposed to asbestos, if they have 16 those diseases, then -- then they qualify for Medicare. So 17 it's the way of getting people on -- providing a government 18 service for those people. 19 BY MR. BECHTOLD: 20 Q Why would ATSDR want to do that? 21 A So I believe ATSDR was directed by the HHS secretary 22 to do it under statute. 23 Q What's the public health benefit of providing these 24 funds to CARD? 25 A People with asbestos related disease get a positive</p>

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1 screening result potentially and then they end up on Medicare,
2 where they can get their -- get the services to treat their
3 disease.
4 Q So what benefit does it serve to have a CARD patient
5 get this ongoing disease management from CARD after they've
6 been diagnosed?
7 MR. DUERK: Objection: Foundation and form.
8 Go ahead.
9 A It's just like any -- any human with disease, there's
10 a benefit to society to make sure people get the appropriate
11 diagnosis and treatment.
12 BY MR. BECHTOLD:
13 Q So is ATSDR's funding of CARD predicated upon CARD
14 following American Thoracic -- American Thoracic Society
15 guidelines in diagnosing patients?
16 A No.
17 Q What's the benefit of early detection of -- of
18 disease, of asbestos related disease?
19 A So for cancer, it's -- should be obvious that, you
20 know, the sooner you get diagnosed typically, the better the
21 prognosis. For some of these chronic noncancer conditions,
22 like pleural plaque, there's a benefit to having the patient
23 know what's potentially causing them to be short of breath, for
24 example, and getting them on the appropriate treatment.
25 Q I'd like to draw your attention back to Exhibit 350,

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1 provision in the Affordable Care Act includes a diagnosis for
2 asbestosis, pleural thickening, or pleural plaques?
3 A Yes.
4 Q Established that the diagnosis is established by a
5 B-reader qualified physician of a plain chest X-ray, correct?
6 MR. DUERK: Objection: --
7 A Yeah.
8 MR. DUERK: -- Form, foundation, misstates the
9 Affordable Care Act itself.
10 BY MR. BECHTOLD:
11 Q And you testified that for the purposes of the ATSDR
12 the physicians at CARD are qualified physicians for the
13 purposes of Notice of Funding Opportunities, correct?
14 A Yes.
15 Q And you testified that that's ATR's -- ATSDR's
16 interpretation of -- of the Act, correct?
17 A Yes.
18 Q And you testified the purposes of the screening
19 grants were threefold, correct?
20 A Yes.
21 Q To provide screening, correct?
22 A Yes.
23 Q To provide outreach?
24 A Yes.
25 Q And education?

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1 which is one of the first exhibits I handed you. So it's going
2 to be on the bottom of this pile (indicating).
3 A Thanks.
4 (Witness complies.)
5 Q Three piles here.
6 MR. DUERK: Which exhibit is that?
7 MR. BECHTOLD: 350.
8 MR. DUERK: Thanks.
9 BY MR. BECHTOLD:
10 Q I'm just going to address some of the -- again,
11 this -- this is your declaration dated September of 2022,
12 correct?
13 A Yes.
14 Q I'm just going to address some of the statements in
15 your declaration. So as you testified, you got degrees from
16 the University of Colorado and Colorado State, correct?
17 www.GeorgiaReporting.com/Schedule
404.389.1155
18 Q And as you testified, you've been an epidemiologist
19 at ATSDR since 2000?
20 A Yes.
21 Q And -- and you testified that you were the -- the
22 contact or the managing person at ATSDR for at least three CARD
23 funding opportunities, correct?
24 A Yes.
25 Q And you testified that the Affordable -- or this

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1 A Yes.
2 Q Then you testified that the -- that the grants
3 amended a panel of B-readers, correct?
4 A Yes.
5 Q And you testified that these B-readers also have a
6 peer review session, correct?
7 A Yes.
8 Q And the peer review session indicates that these
9 highly trained radiologists don't always agree in their CT
10 reading, correct?
11 A Correct.
12 Q And these discordance rates continued over time,
13 correct?
14 A Yes.
15 Q You testified that -- that ATSDR is aware
16 that -- that these B-readings don't effect the CARD diagnoses,
17 correct?
18 MR. DUERK: Objection: Vague.
19 A Can you restate the question, please?
20 BY MR. BECHTOLD:
21 Q No, let me -- I'll just draw your attention back to
22 Exhibit 517, which is the 2011 document. So here it is.
23 A Sorry. Sorry. I'm not -- I'm looking for the cover
24 sheet.
25 Q So again, I draw your attention to Exhibit 517 and

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1 the attachment to that email.
2 (Witness complies.)
3 A Yes.
4 Q Do you -- so you testified that the -- that the
5 B-read panels do not affect an individual's eligibility for
6 Medicare benefits if CARD has diagnosed them otherwise,
7 correct?
8 A Yes.
9 MR. DUEK: Objection: Form, foundation.
10 Go ahead.
11 A Yes.
12 BY MR. BECHTOLD:
13 Q Is it -- was it -- ATSDR's intention was to have
14 individuals diagnosed by CARD qualify for Medicare eligibility
15 regardless of any B-reader result, correct?
16 MR. DUEK: Objection: Form, foundation.
17 A Yes.
18 BY MR. BECHTOLD:
19 Q How do you know that?
20 A The -- the criteria was spelled out in the NOFO and
21 it's -- or operator between the two. It could be deposited by
22 a qualified physician at CARD or by an outside reader
23 potentially.
24 Q So it's disjunctive; one or the other?
25 A To clarify, I think, you know, the qualified

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1 A Yes.
2 Q What's the advantage of being as inclusive as
3 possible in identifying persons with positive screening
4 results?
5 A So I think the -- I think the intent of the original
6 NOFO was to make sure that we weren't excluding people
7 unnecessarily and we had multiple ways people can get on
8 Medicare. Again, giving them the ability to get on Medicare by
9 an outside reader or using the qualified physician at CARD.
10 And there's a benefit to getting as many people that qualify on
11 Medicare as possible so they're getting the appropriate
12 diagnosis and treatment for their conditions.
13 Q What's your understanding of after CARD
14 physicians -- the qualified physicians at CARD diagnose an
15 individual with an asbestos related disease, what's your
16 understanding of what they do next?
17 A So there's a form, the EHH form, Environmental Health
18 Hazard form, that SSA developed. And my understanding is it's
19 the handshake where we hand off patients that have been -- have
20 a positive screening result to SSA so they can start getting
21 their Medicare benefits.
22 Q And what's your understanding of once the -- a
23 B-reader makes a positive determination of a -- of a scan
24 for -- from somebody who's been screened at CARD? What happens
25 next?

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1 physician at CARD and the outside reader could -- could be in
2 complete agreement (indiscernible).
3 Q Okay. But it could -- but also one or the other?
4 A Correct.
5 Q So if -- if either a diagnosis by CARD or a
6 B-reader's positive interpretation would qualify an individual
7 for Medicare benefits?
8 MR. DUEK: Objection: Form, foundation.
9 A Yes.
10 BY MR. BECHTOLD:
11 Q And how do you know that?
12 A Again, it's -- it's specified in the NOFO and in the
13 statute.
14 Q And -- or you testified that you're aware of
15 discordance in CT interpretation, positive CT interpretations
16 by CARD physicians as opposed to outside readers, correct?
17 www.GeorgiaReporting.com/Schedule
404.389.1155
18 Q Does that concern the ATSDR?
19 A Again, I think it's notable but given ATSDR's past
20 work in Libby, it's not surprising.
21 Q And you testified that CARD has reported its -- its
22 positivity rates to the ATSDR quarterly as required, correct?
23 A Yes.
24 Q And I think you testified that ATSDR was satisfied
25 with CARD's performance under the grant, correct?

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1 MR. DUEK: Objection to form.
2 Go ahead.
3 A Can you restate the question, please?
4 BY MR. BECHTOLD:
5 Q What's your understanding of -- of what happens after
6 a -- one of CARD's B-readers identifies -- makes a positive
7 finding on a -- on a scan for a patient for whom CARD has not
8 diagnosed an asbestos related disease?
9 MR. DUEK: Same objection.
10 A It's my -- my understanding is the CARD collates all
11 the data and that hypothetical patient that has, I believe, a
12 positive result from an outside reader but not from CARD would
13 still get dispositioned as having asbestos related disease and
14 move further down the process.
15 BY MR. BECHTOLD:
16 Q And what does that further process entail?
17 A So I believe the next step would be the -- the CARD
18 physician would fill out the EHH form and denote which
19 abnormality the patient has, sign it, and hand it off to SSA.
20 Q Is there any part of the -- of these three
21 grants -- of -- of these three grant notices and funding
22 opportunities that CARD is out of compliance with?
23 MR. DUEK: Objection: Foundation.
24 Go ahead.
25 A No.

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1 MR. BECHTOLD: All right. I'm going to take a brief
2 break, probably about five minutes, and confer with Ms.
3 McNew and then probably finish.
4 THE VIDEOGRAPHER: Going off the record. The time
5 is 11:33.
6 (In recess from 11:33 a.m. until 12:30 p.m.)
7 (On the record.)
8 THE VIDEOGRAPHER: We're back on the record at
9 12:35.
10 MR. BECHTOLD: So Mr. Larson, that's all the
11 questions I have. Thank you very much for your time.
12 THE WITNESS: Thank you.
13 EXAMINATION
14 BY MR. DUERK:
15 Q Just because of the way this has all playing out, if
16 you would please state your full legal name for the record,
17 spelling your last name, that'll be helpful.
18 A Sure. Theodore Larson L-A-R-S-O-N.
19 Q And Mr. Larson, what is your role with the ATSDR?
20 A I'm an epidemiologist.
21 Q Okay. And do you prefer Dr. Larson?
22 A I just have a master's degree so you can address me
23 as master.
24 Q Okay. All right. Mr. Larson, you were the grant
25 administrator for the ATSDR related to CARD's federal grant.

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1 Disease Registry.
2 Q Thank you. And that is under the aegis of the
3 Centers for Disease Control?
4 A Technically ATSDR is a sister agency of CDC but we're
5 so small we actually just function as another center at CDC.
6 Q Prior to working for ATSDR, if you could go through
7 some of your professional background with me that would be
8 helpful.
9 A Sure.
10 Q Where did you go to undergrad?
11 A University of Colorado Boulder.
12 Q And after you received your undergrad degree?
13 A I went to graduate school at Colorado State
14 University.
15 Q And what year did you complete your academic degree
16 at Colorado State?
17 A 1999.
18 Q What did you do after that time?
19 A I was employed as a chemist for the pharmaceutical
20 industry at the end of the 1990s until I took this job at ATSDR
21 in 2000.
22 Q Okay. So in the private sector between Colorado
23 State University and working for ATSDR, you were in the private
24 sector for approximately how long?
25 A So I actually worked my way through graduate school

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1 Is that correct?
2 A I was the project officer.
3 Q All right. And how long did you serve -- or how long
4 have you served in that role?
5 A Just since the start of the ACA grant so 13 years, 12
6 years.
7 Q Okay. Mr. Larson, in terms of your background,
8 experience, and training, I'd like to go through some of your
9 qualifications. And in no way am I intending any slight or
10 anything about qualifications or certifications that you may
11 not have. Mr. Larson, you are not a radiologist, correct?
12 A That is correct.
13 Q You are not a pulmonologist, correct?
14 A That's correct.
15 Q You're not a B-reader, correct?
16 A Correct.
17 Q In terms of any medical degrees, you're not a medical
18 doctor, correct?
19 A Correct.
20 Q It is not your role to diagnose and treat individual
21 patients in any capacity, correct?
22 A Correct.
23 Q In terms of your profession today, you work for the
24 American Toxic Substances Disease Registry. Is that right?
25 A I work for the Agency for Toxic Substances and

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1 and I was working full-time and then going to school on the
2 side. But you're right. So after graduation in 1999 I
3 continued to work as a chemist in the private sector for less
4 than 12 months, I guess.
5 Q Sir, in terms of any work that you've done for any
6 other government agency or subdivision or department, aside
7 from ATSDR, have you ever worked for the Social Security
8 Administration?
9 A No.
10 Q Have you ever worked for the Centers for Medicare
11 Medicaid Services?
12 A No.
13 Q Have you ever worked for the Department of Public
14 Health and Human Services in any state outside of the federal
15 government?
16 A No.
17 Q And today you're testifying on behalf of the ATSDR as
18 what's called a 30(b)(6) deponent. Is that --
19 A Yes.
20 Q -- correct?
21 A Yes.
22 Q You are not testifying on behalf of the Social
23 Security Administration, correct?
24 A That's correct.
25 Q You are not testifying on behalf of CMS or Medicare,

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1 correct?

2 A Correct.

3 Q In terms of the materials that you reviewed prior to

4 today's deposition, did you review any of the depositions that

5 have been taken in this case?

6 A No.

7 Q Okay. Did you review any deposition summaries for

8 Dr. Black, Dr. Morrisette, or Tanis Hernandez?

9 A No.

10 Q Did you review any depositions or deposition

11 summaries for former CARD employees or former physicians who

12 worked at CARD, specifically Dr. Heppe or Dr. Koval?

13 A No.

14 Q Did you read any deposition testimony or any

15 deposition summaries for any current or former B-readers on

16 CARD's expert B-reader panel?

17 A No.

18 Q So particularly did you read the deposition or

19 deposition summary for Dr. Karne?

20 A No.

21 Q Did you read the deposition or deposition summary for

22 Dr. Meyer?

23 A No.

24 Q In terms of any pleadings related to this case -- by

25 pleadings I mean documents filed with the Federal Court in

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1 preparation for your testimony today?

2 A No.

3 Q Sir, in terms of other records, I'll represent to you

4 that there is something called a POMS, or the Program Operation

5 Manuals System, that's been published by the Social Security

6 Administration and made available online. Is that a document

7 that you had any role in creating or producing or publishing in

8 any way?

9 A No.

10 Q Have you ever read the Program Operations Manual

11 System for the Social Security Administration related to the

12 assignment of EHH Medicare benefits?

13 A No.

14 Q In terms of other qualifications, sir, I'm assuming

15 that you've never served as a United States Congressional

16 representative from any state?

17 A That's correct.

18 Q You've never been a United States senator. Fair?

19 A That's fair.

20 Q Okay.

21 A Correct.

22 Q In terms of meetings or conversations with individual

23 members of the United States Senate, have you ever met with

24 Senator -- now former ambassador -- Max Baucus about any

25 matters that were up for a -- a floor vote?

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1 Montana -- have you read any of the pleadings in this matter?

2 A No.

3 Q Okay. And just so I'm very clear for the record, you

4 didn't read -- read the third amended complaint in this matter.

5 Fair?

6 A No.

7 Q Okay. You haven't read any of the statement of

8 undisputed facts in this case, correct?

9 A No.

10 Q Okay. In terms of any of the discovery in this case,

11 have you reviewed any of the discovery materials that have

12 passed between the parties other than what's been referenced in

13 the record today?

14 A No.

15 Q Okay. Sir, just a few other questions and I hope

16 these are as easy for you as the ones in the past.

17 Have you ever had any communication with anyone at the

18 Kalispell Social Security Administration field office to the

19 best of your knowledge?

20 A No.

21 Q Have you communicated with anyone at the Social

22 Security Administration prior to your deposition in this case

23 in preparation for your testimony?

24 A No.

25 Q Have you communicated with anybody at CMS in

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1 A No.

2 Q Did you ever participate in any committee hearings or

3 meet with any of Senator Baucus's staff members prior to the

4 signing of the Affordable Care Act, particularly the EHH

5 provisions into law?

6 A No.

7 Q In terms of any opinions about the specific

8 provisions in the environmental health hazard section of the

9 Affordable Care Act, did anyone ask you for any legal opinions

10 prior to passage of that law into its final form?

11 A No.

12 Q Do you have a law degree, aside from what we've

13 mentioned here?

14 A No.

15 Q Okay. In terms of the -- the EHH forms, are you

16 aware of what an EHH form is generally?

17 A Yes.

18 Q And in terms of those EHH forms, was it part of your

19 role at ATSDR to ever review any of those EHH forms?

20 A No.

21 Q Did you provide any guidance to CARD or anyone else

22 as to how EHH forms should be filled out by the clinic?

23 A No.

24 Q In terms of the EHH form language itself, when was

25 the last time that you can recall seeing an EHH form to the

<p style="text-align: right;">Page 101</p> <p>1 best of your recollection?</p> <p>2 A In preparation for this subpoena, I -- I reviewed the</p> <p>3 document.</p> <p>4 Q Okay. Prior to preparing for today's deposition in</p> <p>5 May of 2023, do you recall the last time that you had seen an</p> <p>6 EH [sic] form?</p> <p>7 A So I had -- I had asked for examples of an EHH form</p> <p>8 in, I believe it was, 2022 from CARD and they had shared some</p> <p>9 redacted versions of forms that had been filled out.</p> <p>10 Q And aside from reviewing those redacted versions of</p> <p>11 EHH forms, do you recall any time that you had asked for or</p> <p>12 reviewed EHH forms prior to 2022?</p> <p>13 A I don't recall.</p> <p>14 Q Okay. In terms of individual patient medical</p> <p>15 records, have you, to the best of your knowledge, ever seen any</p> <p>16 individual patient medical records from the CARD Clinic?</p> <p>17 A No.</p> <p>18 Q And just to be clear, I -- I include in individual</p> <p>19 patient medical records not only their chart notes but also</p> <p>20 their CT scans, their chest X-ray interpretive reports, and any</p> <p>21 B-reader reports for individual patients.</p> <p>22 A So the answer is no, although this morning we</p> <p>23 reviewed an email chain where I had requested some data from</p> <p>24 Dr. Black for an analysis that would have been data stripped of</p> <p>25 any identifiers. I wouldn't have known anything about the</p>	<p style="text-align: right;">Page 102</p> <p>1 patient. I was -- I was looking at correlating, I think,</p> <p>2 spirometry to findings on CT.</p> <p>3 Q Yes. I -- I recall that email and it sounds like you</p> <p>4 were looking for a -- a greater subset of radiographic studies</p> <p>5 than you had seen prior to that time. Does that -- that jog</p> <p>6 your memory?</p> <p>7 A I'd have to look at that email again. I -- I didn't</p> <p>8 even recall that email prior to this morning.</p> <p>9 Q Sir, do you see what's been marked as Exhibit 521 in</p> <p>10 front of you?</p> <p>11 A Yes.</p> <p>12 Q Is that date August 22, 2014?</p> <p>13 A It is.</p> <p>14 Q Okay. And is this an email sent by you to Brad</p> <p>15 Black, Tanis -- and Tanis Hernandez at the CARD Clinic?</p> <p>16 A Yes.</p> <p>17 <small>www.GeorgiaReporting.com/Schedule 404.389.1155</small> Q And sir, is this the email that you were referencing</p> <p>18 where you asked for a larger set of radiographic scans?</p> <p>19 (Witness reviews Exhibit No. 521.)</p> <p>20 A Yes.</p> <p>21 Q And Mr. Larson, do you recall if you received that</p> <p>22 requested larger set of radiographic scans after sending this</p> <p>23 email?</p> <p>24 A I -- I don't recall. I do recall collaborating with</p> <p>25 Dr. Black on some abstracts that were published in -- you know,</p>
<p style="text-align: right;">Page 103</p> <p>1 for scientific meetings. And I don't recall if this -- if this</p> <p>2 is one that we finished or not.</p> <p>3 Q Mr. Larson, in terms of gross record sets, have you</p> <p>4 seen all of the results of radiographic scans, be they chest</p> <p>5 X-rays or CT scans, for every patient from the CARD Clinic in</p> <p>6 any form that you can recall?</p> <p>7 A Do you mean have I seen a data set with all, you</p> <p>8 know, one -- for example, one record per patient so it'd be,</p> <p>9 you know, some -- many thousands of CARD patients? No, I have</p> <p>10 not seen that.</p> <p>11 Q Okay.</p> <p>12 A (Indiscernible.)</p> <p>13 Q And sir, what I'll -- what I'll reference on the</p> <p>14 record is the master data set or a document called the Libby</p> <p>15 Screening Dataset. Have you heard of a record with any title</p> <p>16 similar to that?</p> <p>17 A No.</p> <p>18 Q Okay. And sir, what I'll also represent to you is</p> <p>19 that the master dataset, or the Libby Screening Dataset, at</p> <p>20 least in the form that I've seen it, appears to be an Excel</p> <p>21 spreadsheet that documents the name, date of birth, visit date,</p> <p>22 the outcomes of the CT scans, the outcomes of the chest X-rays,</p> <p>23 the outcomes of the B-reads for both chest X-rays and CT scans.</p> <p>24 For most, if not all, of the thousands of patients that have</p> <p>25 been through CARD's doors, have you seen any document like that</p>	<p style="text-align: right;">Page 104</p> <p>1 during the years that you've been working at ATSDR?</p> <p>2 A No.</p> <p>3 MR. BECHTOLD: Foundation.</p> <p>4 BY MR. DUERK:</p> <p>5 Q Sir, your deposition today is intended to capture</p> <p>6 your testimony as an ATSDR employee, not an employee from any</p> <p>7 other government agency. Is that fair?</p> <p>8 A Yes.</p> <p>9 Q Okay. And in terms of legal interpretations of the</p> <p>10 Affordable Care Act itself, likewise, it is not your mission</p> <p>11 here today to provide legal interpretations of what the</p> <p>12 Affordable Care Act says in terms of legal determinations.</p> <p>13 Fair?</p> <p>14 A Yes.</p> <p>15 Q Okay. Doctor, I'd like to -- I'm sorry. I often</p> <p>16 call people Doctor. Mr. Larson, I'd like to go through the</p> <p>17 screening process versus the diagnosing process at -- at CARD.</p> <p>18 So my understanding this morning, we were talking about CARD's</p> <p>19 screening grant, correct?</p> <p>20 A Uh-huh (affirmative).</p> <p>21 Q It's -- I'm sorry. Is --</p> <p>22 A Yes.</p> <p>23 Q -- that a yes?</p> <p>24 A Yes. Yes.</p> <p>25 Q Okay. And the purposes of that screening grant,</p>

<p style="text-align: right;">Page 105</p> <p>1 again, were threefold. What were those three purposes?</p> <p>2 A Screening itself, outreach, and education.</p> <p>3 Q All right. In terms of a screening program, CARD has</p> <p>4 had various different screening grants during its existence.</p> <p>5 Is that right?</p> <p>6 A Yes.</p> <p>7 Q Okay. And one of those screening grants and one of</p> <p>8 those screening programs was under HRSA. Is that right?</p> <p>9 A Yes.</p> <p>10 Q And what is HRSA?</p> <p>11 A So that's part of the Federal Department of Health</p> <p>12 and Human Services and it's essentially what HRSA -- they call</p> <p>13 it HRSA -- stands for at the moment. But it is another</p> <p>14 health-related agency.</p> <p>15 Q And you were involved in some of the discussions</p> <p>16 about the HRSA grant with CARD early on. Is that fair?</p> <p>17 A I believe so. I was largely not involved with that</p> <p>18 grant but I -- I did see some emails in the last couple of days</p> <p>19 where I -- I was cc'd on them or engaged others at ATSDR about</p> <p>20 them.</p> <p>21 Q Is it fair to say that the screening protocols under</p> <p>22 the HRSA grant were -- were somewhat different from the</p> <p>23 screening protocols under the current CARD grant?</p> <p>24 MR. BECHTOLD: Foundation.</p> <p>25 MR. KAKUK: Mr. Duerk, I'd just like to step in</p>	<p style="text-align: right;">Page 106</p> <p>1 and say I think the HRSA grant is outside the scope of</p> <p>2 the -- of the deposition.</p> <p>3 But feel free to answer --</p> <p>4 MR. DUERK: All right.</p> <p>5 MR. KAKUK: -- to the extent you can.</p> <p>6 A So again I don't recall too many details but I will</p> <p>7 say I think I saw on an email earlier today or when I was</p> <p>8 preparing over the last few days where ATSDR staff were making</p> <p>9 comments on using more than one B-reader, for example.</p> <p>10 BY MR. DUERK:</p> <p>11 Q And that's exactly what I want to reference or get</p> <p>12 into.</p> <p>13 Is it your understanding that at one point there were</p> <p>14 three B-readers who would review each CARD scan and that in</p> <p>15 order to qualify under HRSA, those reads had to either be</p> <p>16 corroborated by two readers or it had to be unanimous?</p> <p>17 www.GeorgiaReporting.com/Schedule MR. BECHTOLD: Foundation, relevance. 404.389.1155</p> <p>18 A So again, I was not -- to my recollection, I was not</p> <p>19 that that involved in the oversight of the HRSA grant. And in</p> <p>20 fact, it was a HRSA-led operation, I think. And we</p> <p>21 just -- ATSDR may have advised on standing it up. And I don't</p> <p>22 recall many of the details. I just recall seeing an email</p> <p>23 either today or in preparation for this meeting today with you</p> <p>24 all where the idea of using more than one reader was</p> <p>25 entertained at least.</p>
<p style="text-align: right;">Page 107</p> <p>1 BY MR. DUERK:</p> <p>2 Q Do you recall whether or not Dr. Black was in support</p> <p>3 of using more than one reader to determine eligibility under</p> <p>4 those earlier versions of the grant?</p> <p>5 MR. BECHTOLD: Foundation, relevance.</p> <p>6 A Are you referring to the HRSA grant?</p> <p>7 BY MR. DUERK:</p> <p>8 Q I am.</p> <p>9 A So I -- I don't -- I don't recall or was not involved</p> <p>10 in those conversations. I had no knowledge perhaps.</p> <p>11 BY MR. DUERK:</p> <p>12 Q Okay. Pardon me if I'm mispronouncing this name.</p> <p>13 Dr. Antao Vinicius?</p> <p>14 A Vinicius Antao, Dr. Antao.</p> <p>15 Q Dr. Antao? Who is he?</p> <p>16 A So he's my former supervisor at ATSDR. Also a</p> <p>17 pulmonologist and is now in the private sector.</p> <p>18 Q Do you recall working with Dr. Antao on any CARD</p> <p>19 related matters prior to the current grant?</p> <p>20 A So I -- I mentioned earlier today that we had</p> <p>21 collaborated with Dr. Black and CARD on other studies or had</p> <p>22 engaged CARD as -- in the role of perhaps a contractor or took,</p> <p>23 like, images for various studies. So to get back to your</p> <p>24 question, yes, Dr. Antao and I had had internal discussions</p> <p>25 about CARD and also met with Dr. Black and other CARD staff.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q Do you recall any discussions with Dr. Antao about</p> <p>2 the topics of conflicts of interest or whether or not Dr. Black</p> <p>3 should be deemed a qualified physician?</p> <p>4 A I do not.</p> <p>5 Q Okay. If we could look at Exhibit 303 together? I'm</p> <p>6 looking at what's been marked as page 12 in the header of this</p> <p>7 document. In terms of the page number at the bottom of the</p> <p>8 page, I'm looking at page 9.</p> <p>9 (Witness complies.)</p> <p>10 Q First of all, Mr. Larson, what is this document?</p> <p>11 (Witness reviews Exhibit No. 303.)</p> <p>12 A This is the NOFO from 2019.</p> <p>13 Q All right. And in terms of the Notice of Funding</p> <p>14 Opportunity from 2019, does this appear to be a true and</p> <p>15 accurate copy of the NOFO from that year?</p> <p>16 A Yes.</p> <p>17 Q Turning to page 12 on the top of the header, do you</p> <p>18 see at the -- the beginning of this page, Section H labeled</p> <p>19 "Screening flow?"</p> <p>20 A Uh-huh (affirmative).</p> <p>21 Q I'd like to talk a little bit about the differences</p> <p>22 between screening and diagnosis in the context of this</p> <p>23 document. Okay?</p> <p>24 A (Nods head affirmatively.)</p> <p>25 Q And I'll read the first section of the top of this</p>

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1 page. Please tell me if I've read it correctly.
2 "Screening flow. The recipient should coordinate the flow
3 of screening participants through the system. Steps in
4 screening flow may include" and then there's a colon.
5 My question is this, Mr. Larson. Is the recipient
6 referenced in this docket; the CARD Clinic?
7 (Witness reviews a portion of Exhibit No. 303.)
8 Q That being the grant recipient.
9 A No.
10 Q Okay. Who is the recipient here?
11 A The recipient would be -- would be CARD. I mean,
12 that's -- that's the grantee.
13 Q All right. Okay. So the recipient here would be the
14 CARD Clinic?
15 A Yes.
16 Q All right. So then the steps in -- in the screening
17 flow. Step 1, "Pre-screening to confirm eligibility for
18 screening according to ACA language as described above in
19 Section B, Eligibility for Screening."
20 Did I read that correctly?
21 A Yes.
22 Q Here the ACA, does that stand for the Affordable Care
23 Act language?
24 A Yes.
25 Q All right. And there is language in the Affordable

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1 Did I read that correctly?
2 A Yes.
3 Q Okay. Step 4 here in the steps in the screening flow
4 reads --
5 MR. KAKUK: Is there a question?
6 MR. DUERK: Not yet.
7 BY MR. DUERK:
8 Q Step 4 in the screening flow reads "Appointment
9 scheduling," correct?
10 A Yes.
11 Q Okay. Step 5 reads "Administration of screening
12 components (radiography (radiograph and HRCT) and FOBT as
13 appropriate)."
14 Did I read that correctly?
15 A Yes.
16 MR. BECHTOLD: Form.
17 BY MR. DUERK:
18 Q Here, HRTC, does that stand for high resolution
19 computer tomography?
20 A Yes.
21 Q Or high-resolution CT scan. Is that fair?
22 A Correct.
23 Q And what does FOBT stand for?
24 A Fecal occult blood test.
25 Q All right. The next step, Step 6, reads "On-site

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1 Care Act about the screening program itself, which is
2 distinguishable from language in the Affordable Care Act
3 related to Medicare eligibility. Fair?
4 A Yes.
5 Q All right. So I -- I'm focusing now on ATSDR's
6 screening program in reference to this document. Does that
7 make sense?
8 A Yes.
9 Q All right. Thank you. The next step, 2, "Initial
10 enrollment and obtaining participant's consent (prior to
11 screening the recipient will obtain consent from each
12 participant)."
13 Did I read that correctly?
14 A Yes.
15 Q So here, prior to the screening taking place, the
16 recipient -- that would be CARD -- would obtain consent from
17 each participant. Is that right?
18 A Yes.
19 Q Okay. Moving to step 3. "Prior to screening,
20 mailing information to each screening participant about the
21 screening program (including an overall program description,
22 listed affiliate providers in the area, letter to personal
23 physician or affiliated provider explaining screening
24 requirements and instructions for how to send radiographic
25 exams to the recipient)."

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1 radiology reading."
2 Did I read that correctly?
3 A Yes.
4 Q Okay.
5 MR. BECHTOLD: Form.
6 BY MR. DUERK:
7 Q Step 7, "Dissemination of urgent results from on-site
8 radiology reading if necessary."
9 Did I read that right?
10 A Yes.
11 MR. BECHTOLD: Form.
12 MR. DUERK: I -- I don't understand your
13 objection. Could you explain it to me?
14 MR. BECHTOLD: You're just reading. You're not
15 asking questions.
16 MR. DUERK: I'm asking if I'm reading it correctly
17 but thank you. I understand your objection now.
18 BY MR. DUERK:
19 Q Step 8, would you please read that next step for me?
20 A "Routing radiographs to B-readers and HRCT stands to
21 radiologists."
22 Q And what is your understanding of that step in the
23 screening flow?
24 A So from studies that I had worked on I know it can be
25 complex trying to manage all the images and so I think that's

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1 referring to just the -- the logistics of getting the right
2 radiograph or CT scan to the right physician.
3 Q And is this the recipient's responsibility,
4 that -- that being CARD?
5 A Yes.
6 Q Okay. Step 9, what is Step 9 on this form?
7 A "Collecting B-reader/radiologist interpretations and
8 disseminating to the screening physician, along with a blank
9 final diagnosis letter to be completed by the screening
10 physician. One copy of the final diagnosis letter will be
11 returned to the recipient and one will be sent to the screening
12 participant."
13 Q Okay. In terms of Step 9 here, when it comes to
14 collecting the B-reader radiologist interpretations and
15 disseminating the screening physician, who is the screening
16 physician in -- in this case?
17 A So I believe that would be the CARD physician
18 coordinating the results of moving radiographs and CT scans
19 around and collecting the results.
20 Q Okay. Here it says that the -- that there's a blank
21 final diagnosis letter that's to be completed by the screening
22 physician. Did I read that fairly?
23 A You did.
24 Q Okay. And so in terms of the final diagnosis for
25 each of these CARD patients in the screening program, who is to

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1 Q Okay. In terms of the B-readers in this case, I
2 think we've already covered the -- the B-reader depositions.
3 But just to be clear, have you read either Dr. Kanne, Dr.
4 Lynch, or Dr. Meyer's sworn testimony?
5 A No.
6 Q Okay. In terms of any conversations that you've had
7 with Dr. Kanne, Dr. Meyer, or Dr. Lynch, have you spoken with
8 any of those doctors in the last year?
9 A No.
10 Q In terms of reading any declarations from Dr. Kanne
11 or Dr. Meyer, have you seen any declarations from those
12 individuals?
13 A No.
14 Q Dr. Kanne, Dr. Meyer, and Dr. Lynch are the three
15 thoracic radiologists on CARD's panel of five B-readers,
16 correct?
17 A Yes.
18 Q Okay. Are you aware that Dr. Kanne and Dr. Meyer
19 have indicated that they are terminating their agreement as
20 B-readers with CARD?
21 A Yes.
22 Q After learning that information, did you have any
23 follow-up conversations as to the reasons why with either of
24 those B-readers?
25 A No.

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1 complete the final diagnosis letter?
2 A I think it's suggested that it would be the CARD
3 physician that fills out that letter.
4 Q Okay. Under Section 9, "One copy of the final
5 diagnosis letter will be returned to the recipient and one will
6 be sent to the screening participant."
7 In terms of that letter, is that letter something that
8 you've seen or reviewed in the past?
9 A No.
10 Q Okay. Doctor, in terms of CARD's responses to
11 discovery requests and deposition testimony, have you reviewed
12 any materials that shows whether Dr. Black considers a
13 radiologist able to offer a diagnosis of a patient?
14 A Can you restate the question, please?
15 Q Sure. Have you read anything that says whether
16 radiologists diagnose according to Dr. Black?
17 www.GeorgiaReporting.com/Schedule
404.389.1155
18 Are you meaning that Dr. Black consider the
19 radiologist capable of diagnosing a patient?
19 Q Almost.
20 A Okay.
21 Q Have you seen any of Dr. Black's testimony wherein he
22 says --
23 A No.
24 Q -- that radiologists do not diagnose?
25 A I have not seen said testimony.

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1 Q In terms of the other parts of Exhibit 303, page 12,
2 if you would please read Step 10 in the screening flow, that
3 would be helpful.
4 A "Creating a disposition for each screening
5 participant, i.e., ARD positive or negative."
6 Q All right. Sir, I'll represent to you that CARD's
7 master dataset has what's called -- what I'll label an ARD
8 positive or negative column in it that shows the disposition of
9 every patient who's been through CARD's screening program.
10 Have you seen CARD's indications of whether those patients are
11 ARD positive or negative based on the master dataset?
12 MR. BECHTOLD: Foundation.
13 A So I -- I don't know. I suspect the -- the results
14 that appear in the quarterly and annual reports from CARD are
15 based on the dataset that you're describing. So the answer is
16 no, but I've seen the results likely based on that --
17 BY MR. DUEK:
18 Q All right.
19 A -- dataset.
20 Q And that brings up an important point. During your
21 deposition testimony today, we've seen exhibits that all
22 categorizes excerpts from CARD's master dataset. For example,
23 the -- in the Exhibit 300 series, we saw several charts that
24 seem to be, you know, excerpts or datapoints for different
25 information related to CARD's screening program. Do you recall

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1 seeing those same datapoints as well?

2 A I -- I think I recall what you're talking about.

3 Q Okay. But in terms of the gross data or the overall

4 data that's been included in CARD's master dataset, whether in

5 printed form or in an Excel spreadsheet, to the best of your

6 knowledge, you've never seen the total collection of that

7 master dataset?

8 A Correct.

9 Q Okay.

10 MR. BECHTOLD: Asked and answered.

11 BY MR. DUERK:

12 Q Sir, in terms of what we have here on Exhibit 303

13 then, in terms of the -- what I'll call the ARD positive or

14 negative column, you've not seen that column on CARD's master

15 dataset?

16 A Correct.

17 Q Okay. Now, in terms of the exhibits that we had on

18 the screen today, there were a number of exhibits shown related

19 to the expert panel of B-readers and their findings. What I'd

20 like to do to get us oriented is show you some of those

21 exhibits and what I'll call the 500 series.

22 MR. DUERK: May I have Exhibits 507 to 512,

23 please?

24 (Mr. Duerk is provided requested exhibits by Mr.

25 Bechtold.)

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1 and 509 in front of us, is it fair to say that these tables

2 include comparisons between the individual outside B-readers

3 related to the CT scans but they do not include a column for

4 what Dr. Black's read or CARD's read was for those same films?

5 A So these are for CT scans not for chest X-rays.

6 Q I'm -- I'm sorry. For --

7 A For --

8 Q -- for CT scans, not films. I apologize.

9 A But you're right. Yeah. I -- I just see columns

10 representing those three outside readers and not the -- the

11 CARD reader.

12 Q In terms of these three collections in Exhibits 508

13 and 509, is it fair to say that these CT positive or negative

14 results represent a -- a smaller subset than the entire balance

15 of all CARD patients that have been through the screening

16 program?

17 A So by design these panels just collect a, you know, a

18 sample of patients for, you know, for that panel. So -- so

19 yeah. Short answer, yes.

20 Q Okay. And in terms of the number of individual

21 samples here, I -- I think I've seen it in the grant reporting

22 material that for peer review sessions there might be a smaller

23 subset of 54 individual reads per session. Does that square

24 with your memory or is there a different number?

25 A I don't recall. That does seem like a lot of images

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1 MR. DUERK: Thank you.

2 BY MR. DUERK:

3 Q Doctor, I'm putting exhibits in the 500 series in

4 front of you. Do you see Exhibit 508 at the top?

5 A I see it at the bottom.

6 Q Okay. Sorry. In terms of the 500 series exhibits,

7 are we essentially looking at the read results of the different

8 B-readers on CARD's panel and whether or not they determined

9 that there was a positive or negative outside CT read for the

10 parenchymal area of the lungs?

11 A I believe that's correct but the, you know, the

12 tables are not documented that well so I -- I believe that's

13 correct.

14 Q Okay. And -- and what do you mean the tables aren't

15 documented that well?

16 A So there's no table caption to clarify what the table

17 contains or how to interpret what some of these columns

18 are. PTID sounds like patient ID.

19 Q So --

20 A CT date is self-explanatory most likely although

21 there may be some nuance in the date run. I don't know what PR

22 set would be or CARD set would be and -- but you're right.

23 The -- the three aggregations of columns are -- seem to

24 correspond to the three outside CT readers.

25 Q All right. And so at least in terms of Exhibits 508

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1 to look at for one meeting of . . .

2 Q In terms of those peer review calls, did you ever

3 participate in any of those peer review calls with B-readers

4 yourself?

5 A I have attended but I wouldn't say I participate.

6 I'm not a clinician and really can't contribute to the

7 conversation.

8 Q Okay. And if you could estimate for me how many of

9 those peer review calls you've participated in, that would be

10 helpful.

11 A So in the early years of the grant I went to several

12 but I don't -- I have not gone in several years actually.

13 I -- I wasn't contributing much and it was more an internal

14 discussion for the physicians I thought.

15 Q All right. There was some discussion when Mr.

16 Bechtold was showing you these exhibits about the readers not

17 necessarily agreeing on every single scan, correct?

18 A Yes.

19 Q Okay. I think during that part of your deposition,

20 you were asking whether or not these CTs were randomly sampled

21 by CARD. Did I hear that right?

22 A So my -- again, my recollection -- so I have a weak

23 memory, I guess, of what -- I saw the email where I had

24 proposed doing a random sample but I also seem to recall that

25 there might have been some over-selection of hard to read

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1 images. You know, the patient's hard to classify.
2 Q All right. So given that possibility, if these
3 samples were not random but indeed samples selected by CARD
4 that were more difficult for -- for an interpretation, is it
5 fair to say that these exhibits, if they weren't based on
6 random samples but more difficult reads, wouldn't necessarily
7 be representative of dissension among the readers on CARD's
8 expert panel?
9 A No, but that gives the opportunity -- you know, if
10 you had easy to diagnose patients, it would be kind of a boring
11 reading, I guess. I mean --
12 Q Sure.
13 A -- you want to stimulate conversation between the
14 readers so you -- I would think that's perfectly acceptable to
15 have -- you know, for learning purposes and teaching purposes
16 to have tougher images to review.
17 Q Okay. In terms of the data that you've reviewed,
18 have you ever seen any of these peer review session reports
19 with a column on it to include the CARD interpretations?
20 A I don't recall seeing a report with that column in
21 it.
22 Q In terms of the kappa agreement, if you could give me
23 a -- just a layperson's term of what kappa agreement means or
24 signifies related to reader variability that would be helpful.
25 A So it's a statistical approach and it's measuring,

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1 calculation?
2 A I believe this is just for the outside readers.
3 Q All right. So in terms of the data that we have
4 about read dissension rates between the individuals who are
5 reading CT scans, Dr. Black is left out of the data that we've
6 reviewed in all these exhibits so far. Is that right?
7 A I believe so.
8 Q And the only data that you and the ATSDR had to
9 consider about Dr. Black's read rate were the -- just the
10 printout numbers that were included in CARD's federal grant
11 reporting forms --
12 A Yes.
13 Q -- to ATSDR?
14 A That's correct.
15 Q Okay. In terms of any follow-up by you, aside from
16 the email that you pointed out earlier, where you were asking
17 for a larger set of CARD's reads, do you recall any other time
18 where you followed up to obtain the gross dataset that would
19 show what CARD's read rates were in terms of variability or
20 dissension from the other readers?
21 A No.
22 (Exhibit No. 50 is introduced and identified for the
23 record.)
24 Q Okay. In terms of that dissension rate, there are
25 two exhibits. There are Exhibit 50 and 344. I'll put Exhibit

Page 122

1 you know, where -- where two or more readers are agreeing on
2 the outcome and the higher the number, the better the
3 agreement.
4 Q Okay. In terms of the individual responsible for
5 coming up with those kappa agreements at CARD, who was that
6 individual?
7 A Curtis Noonan.
8 Q In terms of some of the exhibits that I've seen
9 related to Curtis Noonan's work, I've seen what appeared to be
10 some graphs that chart kappa agreement. Have you seen those
11 charts as well?
12 A Yes.
13 Q Okay. I'll try to put one in front of you so that
14 we're literally on the same page.
15 A Okay.
16 Q Do you see Exhibit 505 in front of you, what appears
17 to be page 6?
18 A I do see it.
19 Q All right. And what is the title of that graph?
20 A "Overall Kappa for parenchymal and pleural reads
21 combined."
22 Q In terms of the data that Curtis Noonan used or
23 synthesized to form these tables, charts, and graphs, are you
24 aware of whether or not Dr. Noonan included Dr. Black's read
25 rate or any of CARD's CT read rates to come up with that kappa

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1 50 in front of you and I'll represent to you that this is an
2 excerpt of the final report that Mr. Bechtold showed you
3 earlier. Do you have Exhibit 50 in front of you?
4 A Yes.
5 Q Now, sir, if you would please turn to what's marked
6 as page 19 in the bottom right-hand corner of Exhibit 50?
7 (Witness complies.)
8 Q It's also Bates stamped as page, I believe, 6623 and
9 also has another page indicator; FCA008750.
10 Do you have that in front of you?
11 A Yes.
12 Q Do you see the report that CARD forwarded to you and
13 the language here that begins "Dissension between CARD
14 diagnosis rate and outside reader diagnosis rate?"
15 A Yes.
16 Q Now, in terms of the -- the second paragraph, do you
17 see that CARD has stated "CARD's diagnosis rate is 47 percent
18 versus a 41 percent diagnosis rate by outside readers."
19 Did I read that part of the sentence correctly?
20 A Yes.
21 Q Okay. The sentence continues "So about 206 people
22 fall into this category."
23 Did I read that correctly?
24 A Yes.
25 Q In terms of the figures on Exhibit 50, if you could

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1 look at page 1 or the first page of Exhibit 50?

2 (Witness complies.)

3 Q Do you see Table 1?

4 A Yes.

5 Q Do you see here that CARD has stated "Number ARD

6 diagnosed, grant cumulative total is 1,620 or 47 percent?"

7 A Yes.

8 Q All right. And in terms of the indication of 41

9 percent, could you please turn to page 4, what's Bates stamped

10 6608 on Table 7?

11 (Witness complies.)

12 Q Do you see Table 7 reads "Single outside read results

13 by B-reader CXR or radiologist CT?"

14 A Yes.

15 Q And do you see a -- a row and column here that

16 indicates a 41 percent percentage?

17 A Yes.

18 Q And what does that correspond to?

19 A Outside CT reads abnormal.

20 Q All right. So in terms of the data that you've seen

21 related to diagnostic dissension, was there a -- a greater

22 diagnostic dissension between outside readers and CARD than 6

23 percent?

24 A In later reports was -- was the difference bigger

25 than 6 percent?

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1 Relator's false claim act case, have you seen any of the

2 individual counts that have been set forth in Relator's

3 complaint?

4 A I don't know what Relator's complaint refers to.

5 Q Okay. And the relator in this case would be BNSF

6 standing in the shoes of the United States bringing this case

7 forward. So that is what I mean by relator.

8 Have you seen the relator's third amended complaint and

9 the individual patients that constitute the false claim

10 allegations in --

11 MR. BECHTOLD: Asked and answered.

12 BY MR. DUERK:

13 Q -- this matter?

14 Go ahead.

15 A No.

16 Q Okay. And so I take it from your response that you

17 have not performed any kind of data analysis for the several

18 hundred individual patients that form the basis for Relator's

19 complaint?

20 A That's correct.

21 Q Okay. And likewise, because there's been no data

22 analysis, is it fair to say -- and I'll lump a few different

23 pieces of information here but stop me if I'm wrong. Is it

24 fair to say that for those hundreds of patients you have not

25 seen CARD's master dataset, you have not seen those patients'

Page 126

1 Q Was the difference bigger than 6 percent in any of

2 the data that you saw?

3 A I don't recall. I'd have to recheck later reports.

4 I -- I believe that it may have gone up actually over -- over

5 time.

6 Q Was that diagnostic dissension ever as great as 70

7 percent in any information that you saw from CARD?

8 A A 70 percent difference between CARD and the outside

9 readers? I don't recall a figure like that.

10 Q Okay. Would a figure like that be significant in

11 your mind?

12 A So 70 -- I believe I -- I see today there was 70

13 percent prevalence of abnormalities as detected by the CARD

14 reader so that is -- you know, that's quite notable. That's

15 running about double what the outside B-readers have found over

16 time.

17 Q Okay. And in terms of that diagnostic dissension,

18 whether it's 70 percent, 50 percent, or 100 percent in some

19 cases for some subsets, have you ever looked at the individual

20 datapoints on CARD's master dataset that would back up those

21 figures?

22 A No.

23 MR. BECHTOLD: Asked and answered.

24 BY MR. DUERK:

25 Q Mr. Larson, in terms of the individual patients in

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1 medical records, you have not seen EHH forms, you have not seen

2 any of the CT or chest X-ray or B-read interpretive reports

3 saying that those individual patients do not have any sign of

4 asbestos-related disease?

5 A That's correct.

6 Q Would it trouble you if hundreds of patients had been

7 submitted for Medicare coverage when CARD knows that those

8 patients do not have a diagnosis of asbestos related disease?

9 A So if -- if true, that would be troubling. I don't

10 believe CARD intentionally misdiagnoses.

11 Q And I understand that you don't believe that. But my

12 question is if you haven't seen any of the underlying data that

13 shows that, as a scientist, why would you be willing to offer

14 that opinion? You would agree with me, sir, that opinions

15 about whether fraud have been -- whether fraud has been

16 committed should be based on facts and data. Fair?

17 A Yes.

18 Q Okay. And you have not seen the data upon which

19 those fraud allegations are based in this case, correct?

20 A Correct.

21 Q Sir, in terms of your involvement with CARD, you have

22 known the -- the individuals who -- who work and serve at CARD

23 for many years. Is that fair?

24 A That's fair.

25 Q And your declaration, I believe, says that you've

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1 worked closely with CARD for over a decade.
2 A Yes.
3 Q You've been to Libby, correct?
4 A Yes.
5 Q You've worked with Dr. Black on the ATSDR grant for
6 years, correct?
7 A The present ACA grant, yes.
8 Q And in terms of research at CARD, you yourself
9 have -- have published studies based on some of the -- the data
10 that's been generated by CARD. Is that fair?
11 A I've managed and published under data collected prior
12 to the ACA grant.
13 Q Okay. Sir, if some of that data is later found to be
14 incorrect, what effect, if any, would that have on any of the
15 various studies that have been published about disease rates in
16 Libby, Montana?
17 A So in contrast to a clinical activity like doing a
18 screening, the -- the studies I did were epidemiologic, were
19 population-based, and so in that case, CARD -- I can name a
20 couple of studies where CARD collected the images. But I did
21 my own analysis and, you know, I -- I ran my own readers, for
22 example, and -- and had a study protocol. So it's a little bit
23 different.
24 Q Okay.
25 A Understand that -- and epidemiologic definition of

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1 those patients with any disease though, correct?
2 A That's correct. I'm not a -- I'm not a clinician.
3 Q In terms of the -- the NOFO, so the Notice of Funding
4 Opportunities, we've been through a couple of the Notice of
5 Funding Opportunities. Aside from CARD, were there any other
6 facilities, clinics, or medical entities that applied for that
7 grant?
8 A So the NOFO is largely tailored for CARD actually and
9 I think -- I think the answer is no. Maybe -- there may have
10 been others that applied for the first NOFO but after that it
11 was -- CARD was the only applicant.
12 Q In terms of CARD's reporting responsibilities, it's
13 the responsibility of a grant applicant to be truthful and
14 accurate in the reporting that it provides to the federal
15 agency, correct?
16 A Correct.
17 Q Okay. In terms of any type of verification process
18 to ensure that the information that you are getting
19 from -- that you are getting from CARD was accurate, aside from
20 the periodic visits what did ATSDR do to ensure that the
21 information that CARD submitted in -- in its grant application
22 and follow-up reports was accurate?
23 A There was no other -- no other checks done of their
24 data.
25 Q You relied on CARD to provide true and accurate

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1 disease is different than what would be used in a clinical
2 setting.
3 Q Right. And that's exactly what I'm trying to get to,
4 Doctor -- or I'm sorry -- Mr. Larson. In terms of data in
5 a -- a screening setting, that data is -- is different from
6 data used to diagnose. Fair?
7 A I -- I'm saying there's a distinction between data
8 used -- used for an epidemiologic study versus putting a
9 disposition on a patient. It's -- it's very different and --
10 Q Right.
11 A -- a lot of times in epidemiology you use a more
12 conservative definition than you would in a -- in a clinical
13 setting.
14 Q Okay. And in terms of the clinical setting, that's
15 not a setting in which you've ever practiced. Fair?
16 A That's correct.
17 Q In terms of any of the -- the individual subjects in
18 any of your screening studies, those were never your patients
19 per se, correct?
20 A So I never did a screening study per se. I mean, I
21 was -- I -- I may have got -- I think the studies I did all
22 collected during -- you know, I got images collected
23 specifically for my -- for my study.
24 Q Okay. In terms of any of the studies that you've
25 worked on, as part of that study you never diagnosed any of

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1 information --
2 A Yes.
3 Q -- in all their reporting. Is that fair?
4 A Yes.
5 Q Okay. We went through some of the reporting. I -- I
6 think -- I'll try to orient you to a document here in a minute
7 but when Mr. Bechtold was asking questions, you alluded to some
8 success stories that CARD would report on to ATSDR. Do you
9 recall that?
10 A Yes.
11 Q And can you think of some examples of success stories
12 that might have been reported?
13 A I believe there's an ongoing table in the report. I
14 don't remember what year we started including it but I think it
15 tells the incidental findings. For example, one patient might
16 have breast cancer. That's an incidental finding when getting
17 a radiograph collected for the screening program. And that's
18 a -- that's a huge public -- public health win, when you can
19 detect something as -- a collateral finding in screening.
20 Q Did CARD ever report on the losses so to speak or
21 the -- the problematic stories?
22 A There's an ongoing section on challenges in the
23 report.
24 Q Okay. And what kinds of topics do you recall coming
25 up in those sections of your report?

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1 A So I don't think it's been a problem in recent years,
2 but there was at one -- one point the backlog of outside
3 readings was quite pronounced and that was a -- a challenge in
4 at least one report.

5 Q Okay. Are there any other problems other than the
6 backlogs of the readings that you can recall that come to mind?

7 A So there's, like, a -- staffing has been an issue. I
8 know CARD has sought, at times, a second physician and has had
9 difficulty recruiting.

10 Q Okay. In terms of those reports, and I'll orient you
11 to Exhibit 311 --

12 (Witness complies.)

13 Q -- do you recall any of those reports referencing not
14 just physician shortages but do you recall any sections of the
15 CARD report related to physicians who had left or why they had
16 left?

17 A So this has been a long grant. It's over 12 years.
18 And my memory is shaky but I think there have been other, you
19 know, physicians that were employed for short amounts of time
20 at CARD.

21 Q Do you recall speaking with any of those physicians
22 after they left? For example, do you recall speaking, you
23 know, to Dr. Koval or Dr. Heppe about why they left?

24 A No.

25 Q Okay. Do you recall reading anything in the CARD

Page 135

1 3, "Provider availability?"

2 A Yes.

3 Q Do you see Dr. Alisa Koval referenced in Section 3
4 labeled "Provider availability?"

5 A Yes.

6 Q I'll read the middle part of this page just to orient
7 us and then tell me if I've read it correctly.

8 "Dr. Black also consistently provides ongoing oversight
9 and over-reads while also completing his other
10 responsibilities. He is the primary provider to conduct
11 outreach and education activities but more availability is
12 still needed."

13 Did I read that correctly?

14 A I'm having difficulty getting eyes on what
15 you're -- what you're reading.

16 Q It's starting here (indicating) with Dr. Black.

17 A I see.

18 (Witness reviews a portion of Exhibit No. 310.)

19 A Yes, you read that correctly.

20 Q All right. And with this document, am I -- am
21 I -- does this report seem to address the concern you raised
22 about provider availability that you identified as a -- a CARD
23 area of concern?

24 A So again, this is early in the grant and my memory is
25 kind of shaky on this but this could be what I'm thinking of.

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1 reports about Dr. Heppe -- or I'm sorry -- Dr. Koval, in
2 particular, leaving?

3 A I don't recall.

4 Q Do you recall seeing anything in any of CARD's
5 reports about their B-readers terminating the contracts?

6 A Yes.

7 Q Okay. And what do you recall reading about the
8 B-readers terminating their contracts?

9 A So I may be imparting information from a phone
10 conversation. It may also be in the report. But I think
11 readers had terminated out of, you know, as a consequence of
12 litigation. You know, it was -- they were having to turn up
13 for depositions and that sort of thing.

14 Q And this is information that CARD provided to you,
15 not the B-readers themselves, correct?

16 A Correct.

17 Q Okay. And so the reason for the B-readers leaving
18 disclosed by CARD was that the B-readers were feeling put upon
19 by litigation. Is that what you recall?

20 A Yes.

21 Q And do you recall any other reason that CARD told you
22 the B-readers left?

23 A No.

24 Q I'd like to show you page -- oh, I'm sorry -- Exhibit
25 310, page 4 of 17. Do you see page 4 in front of you, Section

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1 Q Okay. Following up, it says "Strategy to address:
2 CARD has a two-pronged approach to address this challenge. They
3 are reflected in the Year 02 goals and objectives listed below.
4 Dr. Alisa Koval, a physician trained in occupational medicine,
5 will assist in implementation of the screening program goals
6 and objectives two days a month. The second strategy to
7 address this challenge is to begin a dedicated recruitment
8 strategy to retain another permanent physician at CARD,
9 preferably an occupational medicine physician or
10 pulmonologist."

11 Did I read that right?

12 A Yes.

13 Q Okay. In terms of your understanding of Dr. Koval's
14 role at CARD, aside from what's contained here in the grant
15 reporting, what -- what was your understanding of Koval's role
16 at CARD, if any?

17 A So I don't -- I don't even remember Dr. Koval at all
18 so I'm relying totally on the report. It sounds like she was
19 an OccMed physician and must have been part-time. I -- I
20 honestly don't recall anything about Dr. Koval. It could be
21 that she was an area -- you know, maybe someone who was living
22 in Libby for a shorter period of time and was looking for
23 part-time work. I'm speculating. I'm just going off what's in
24 this report.

25 Q Okay. If we could turn to page 8 of 17 of that

<p style="text-align: right;">Page 137</p> <p>1 report?</p> <p>2 (Witness complies.)</p> <p>3 Q I'm looking at the top of the page. It says, "Goal</p> <p>4 1: provide medical screening in the Libby area and across the</p> <p>5 nation."</p> <p>6 Are you on page 8 of 17?</p> <p>7 A Yes.</p> <p>8 Q Okay. I'm looking under Section 2 and it appears to</p> <p>9 contain more information about Dr. Alisa Koval. Do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q Okay. It says here, beginning in the second</p> <p>13 sentence, "Dr. Koval has experience in reading Libby amphibole</p> <p>14 asbestos radiography and will complete screening evaluations in</p> <p>15 the same fashion as all other CARD screening medical</p> <p>16 providers."</p> <p>17 Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q "She will follow all existing procedures and</p> <p>20 protocols and will work under the supervision of Dr. Black.</p> <p>21 Dr. Black will provide oversight of all CARD screening</p> <p>22 providers and will over-read radiographic images and review</p> <p>23 physical health evaluation findings, including determination of</p> <p>24 diagnostic status as necessary."</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">Page 138</p> <p>1 A Yes.</p> <p>2 Q "Once fully trained and oriented to CARD screening</p> <p>3 protocols and procedures, Dr. Koval will provide oversight to</p> <p>4 the primary screening medical provider, Michelle Boltz, Nurse</p> <p>5 Practitioner-C, in Dr. Black's absence."</p> <p>6 Did I read that correctly?</p> <p>7 A Yes.</p> <p>8 Q Okay. Were you aware that Dr. Koval, according to</p> <p>9 her testimony, did not feel comfortable performing radiographic</p> <p>10 reads to diagnose patients with ARD at CARD?</p> <p>11 A No.</p> <p>12 Q Did you ever hear any information from CARD that Dr.</p> <p>13 Koval felt uncomfortable performing radiographic reads at CARD?</p> <p>14 A No.</p> <p>15 Q Did you ever hear anything about Dr. Heppe at any</p> <p>16 time being uncomfortable not just performing radiographic reads</p> <p>17 himself but discomfort with how the radiographic reads were</p> <p>18 being performed at CARD while he was employed there?</p> <p>19 A No.</p> <p>20 Q In terms of the local physicians, did you ever speak</p> <p>21 to radiologist Dr. Becker about the CARD program and his</p> <p>22 discomfort with CARD's practices?</p> <p>23 A No.</p> <p>24 Q Did you ever speak with Dr. Timothy Obermiller, a</p> <p>25 pulmonologist in Kalispell, about his discomfort with CARD's</p>
<p style="text-align: right;">Page 139</p> <p>1 reading methodology?</p> <p>2 A No.</p> <p>3 Q Did you ever speak with Dr. Anthony Dal Nogare,</p> <p>4 another pulmonologist in Kalispell, about his discomfort with</p> <p>5 CARD's radiographic reads and CT reading practices?</p> <p>6 A No.</p> <p>7 Q Mr. Larson, during Dr. Black's deposition he was</p> <p>8 asked about the topic of an error rate related to radiographic</p> <p>9 reads. Is that a concept that's generally familiar to you?</p> <p>10 A I don't think I've heard the term error rate in</p> <p>11 reference to radiographic reads but, you know, there are other</p> <p>12 statistics reader agreement. You know, that sort of thing.</p> <p>13 Q Okay. Are you aware of any software that</p> <p>14 radiologists use to try to keep track of their error rate?</p> <p>15 A No.</p> <p>16 Q In terms of any error rate, is that a topic that CARD</p> <p>17 has ever addressed with you vis-à-vis its CT reads or chest</p> <p>18 X-ray reads?</p> <p>19 A No.</p> <p>20 Q In terms of information in CARD's grant reporting,</p> <p>21 has CARD ever included data showing that they submit patients</p> <p>22 to Medicare who they know do not have a diagnosis of</p> <p>23 asbestos-related disease?</p> <p>24 A No.</p> <p>25 Q In terms of your understanding of whether or not that</p>	<p style="text-align: right;">Page 140</p> <p>1 conduct would be proper from the ATSDR's perspective, in your</p> <p>2 view, would it be proper to submit patients for benefits who do</p> <p>3 not have a diagnosis of asbestos-related disease?</p> <p>4 A No.</p> <p>5 Q In terms of submitting patients for any kind of</p> <p>6 Medicare or Meridian benefits for housekeeping or gym</p> <p>7 membership, in your mind would it be proper to knowingly submit</p> <p>8 patients for those benefits --</p> <p>9 A No.</p> <p>10 Q -- in the absence of an asbestos related disease</p> <p>11 diagnosis?</p> <p>12 A No.</p> <p>13 Q And based on the reporting that you've seen from</p> <p>14 CARD, has CARD reported to you the numbers of individual</p> <p>15 patients that they have submitted to any government agency for</p> <p>16 federal benefits in the absence of asbestos related disease?</p> <p>17 A No.</p> <p>18 Q If there were hundreds of patients who had been</p> <p>19 submitted for federal benefits without a diagnosis of</p> <p>20 asbestos related disease, would that concern you?</p> <p>21 A Yes.</p> <p>22 Q In your mind, based on your position with ATSDR, it</p> <p>23 is not the purpose of any of the work you do, based on the</p> <p>24 Affordable Care Act, to submit patients for medical benefits</p> <p>25 who are not sick from asbestos related disease who have no</p>

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1 diagnosis of asbestos related disease, correct?

2 A Can you restate the question?

3 Q Sure.

4 A I may need a break soon.

5 Q Sure. I'll -- I'll just put it this way.

6 A Sure.

7 Q Based on your involvement with the ACA from ATSDR's

8 perspective, is it your view that the ACA, the grant that

9 you're a part of, was set up to provide Medicare benefits or

10 federal benefits to people who are not sick from asbestos

11 related disease?

12 A No.

13 MR. DUERK: Let's go ahead and take a break.

14 THE WITNESS: Thank you.

15 THE VIDEOGRAPHER: Going off the record. The time

16 is 1:52.

17 (In recess from 1:52 p.m. until 2:01 p.m.)

18 THE VIDEOGRAPHER: We're back on the record at 2:01.

19 BY MR. DUERK:

20 Q Mr. Larson, I'm looking at your affidavit here,

21 specifically focusing on Paragraphs 12 and 13. Do you have

22 your affidavit in front of you?

23 A I do.

24 (Witness reviews Exhibit No. 350.)

25 Q Okay. So in terms of Paragraph 12, I'm just reading

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1 went to SSA. Is that right?

2 A That's correct.

3 Q The -- the issue that I'd like to bring up here is

4 that apparently CARD has interpreted 2,767 CT scans as abnormal

5 but the number of EHH forms completed appears to be quite a bit

6 higher than that figure. Does it appear that way to you as

7 well?

8 A So the number you cited before was above 3,000 and

9 the number in my statement is less than 3,000 so that appears

10 to be correct.

11 Q Okay. The other thing that I'd like to address here

12 is that in Paragraph 13 of your -- your statement, you say that

13 "As of a recently quarterly -- quarterly report, CARD submitted

14 to ATSDR in March 2022, radiologists have read 4,689 CT scans,

15 of which radiologists interpreted 1,537 as abnormal, or 33

16 percent."

17 Did I read that correctly?

18 A Yes.

19 Q Okay. Sir, just in terms of abnormalities on a CT

20 scan, is it your understanding that there are certain

21 conditions that might appear on a CT scan that don't

22 necessarily have anything to do with asbestos related disease?

23 A I'm not a clinician and I'm not a reader so I -- I

24 would say I don't know.

25 Q Okay. Just as a general matter -- and it's okay if

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1 from it. Please tell me if I'd read it correctly.

2 "As of a recent quarterly report CARD submitted to ATSDR

3 in March 2022, CARD has read 4,819 CT scans of which CARD's

4 physician interpreted 2,767 as abnormal, 57 percent."

5 Did I read that correctly?

6 A Yes.

7 Q In terms of the numbers of EHH forms submitted, I'll

8 represent to you in Paragraph 38 of -- of CARD's -- I believe

9 it's their initial answer, CARD has represented in discovery

10 that 3,414 EHH forms were submitted or completed as of April 4,

11 2022. Do you have any knowledge of the number of EHH forms

12 that were submitted?

13 A There is a table in the quarterly and annual report

14 on EHH forms completed and I don't recall the exact counts from

15 that table but that's where you would find that information.

16 Q Okay. And not to pin you to a number here but if

17 CARD has reported that figure in their grant reporting or in

18 discovery responses in the -- in the sworn pleadings in this

19 case, would you have any reason to disagree with those numbers

20 yourself?

21 A No.

22 Q Okay. Sir, in terms of the -- the EHH form process,

23 that's -- that's not really something that you're involved in

24 in terms of reviewing EHH forms before they go out or reviewing

25 information that's submitted with the EHH forms that -- that

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1 you don't know -- but just as a general matter, have you heard

2 that there are abnormalities that appear on a CT scan read by a

3 radiologist that have nothing to do with asbestos related

4 disease?

5 A I'm certain there are structures that can be read or

6 misread as -- as pleural plaque. That's -- that's

7 the -- that's the crux. I mean, that's what makes pleural

8 plaque so difficult to identify.

9 Q In terms of one of those abnormalities that may

10 appear on a CT scan but has little or nothing to do with

11 asbestos related disease, there's been testimony from

12 radiologists in this case, pulmonologists, and even Dr. Black

13 that one such abnormality that may have nothing to do with

14 asbestos related disease may be a fractured rib. And I'll be

15 just referring to that as a touchstone. Are you aware that a

16 fractured rib would present as an abnormality on a CT?

17 A I -- yeah, I have no knowledge of that but I believe

18 there is -- in the B-reader classification, I think there is a

19 field on there for fractured rib.

20 Q Okay. But in terms of completing those B-reader

21 forms or performing any sort of interpretation of a chest X-ray

22 or a CT scan, that is not a job you've ever had, right?

23 A Correct.

24 Q Okay. Dr. Morrisette is now the -- is she the

25 clinical director of CARD?

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1 A Yes.

2 Q Okay. And it's my understanding that she has taken

3 over quite a few of Dr. Black's responsibilities of the clinic.

4 Is that your understanding also?

5 A Yes.

6 Q In terms of this fractured rib, hypothetically, in

7 cases where there is a CT abnormality detected on a scan

8 related to a fractured rib but that abnormality is known by the

9 clinician not to be related in any way to asbestos-related

10 disease, would it be proper in your mind for the doctor to

11 submit that patient for federal benefits, claiming they have a

12 diagnosis of asbestos related disease?

13 A No.

14 Q Based on any reporting forwarded to you by CARD, were

15 you aware that that precise practice is one that Dr.

16 Morrisette believes is valid?

17 MR. BECHTOLD: Misstates the evidence.

18 A I have -- I have no knowledge of Dr. Morrisette's

19 comments on rib fractures.

20 BY MR. DUEK:

21 Q Would you agree with the general statement that a rib

22 fracture does not equal asbestosis?

23 A Yes.

24 Q If a physician, seeing a rib fracture on a CT scan,

25 knowing that that CT scan showed a rib fracture, not

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1 (On the record.)

2 THE VIDEOGRAPHER: We're back on the record at 2:18.

3 FURTHER EXAMINATION

4 BY MR. BECHTOLD:

5 Q Mr. Larson, I have some follow-up questions. And the

6 first comment I want to make on the record is we are collecting

7 your trial -- or testimony today because you will be

8 unavailable for trial. Is that correct?

9 A Yes.

10 Q And thank you for making yourself available outside

11 of the trial dates. Just a couple of follow-ups on what Mr.

12 Duerk asked you. Mr. Duerk asked you if CARD had ever informed

13 you that the B-readers -- why the B-readers had decided to

14 leave the panel, specifically Dr. Kanne and Dr. Meyer. And you

15 mentioned that you thought if -- CARD had told you it had

16 something to do with the litigation.

17 (Exhibit No. 525 is introduced and identified for the

18 record.)

19 Q I have presented to you Exhibit 525. Could you tell

20 us what that is?

21 (Witness reviews Exhibit No. 525.)

22 A This is an email from Tracy McNew to David Lynch,

23 Jaime Szeinuk, cc'ing Rhonda LaBelle and me.

24 Q Okay. And in the body of the email did Tracy McNew

25 explain why the doctors had decided to leave the B-reader

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1 asbestosis, certified a diagnosis of asbestos related disease,

2 that being asbestosis to the federal government, in support of

3 Medicare benefits, would you find that problematic?

4 A Yes.

5 Q Have you heard from anyone that CARD has been

6 employing that practice of submitting patients without a

7 diagnosis of asbestos related disease to the Social Security

8 Administration for Medicare benefits since the Affordable Care

9 Act went into existence?

10 A No.

11 Q And if you learn that the Center for Asbestos Related

12 Disease had been knowingly submitting patients for Medicare

13 benefits, knowing that those patients did not have a diagnosis

14 of asbestos related disease since the ACA grant and since the

15 Affordable Care Act was put into place, would you likewise find

16 that problematic as well?

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18 MR. DUEK: Mr. Larson, I appreciate your time

19 here today. I have no further questions at this time.

20 THE WITNESS: Thank you.

21 MR. BECHTOLD: All right. Let's take a little break

22 and we'll switch our situations.

23 THE VIDEOGRAPHER: Going off the record. The time

24 is 2:12.

25 (Off the record from 2:12 p.m. until 2:18 p.m.)

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1 panel?

2 A Yes.

3 Q Does this refresh your memory of what CARD may have

4 informed you?

5 A Yes.

6 Q Could you tell the jury now what the CARD informed

7 you about the doctors' decision to leave the B-reader panel?

8 MR. DUEK: I'll object. No CARD disclosure.

9 Go ahead.

10 A So I'm skipping down about halfway through the email.

11 "Despite positive" -- let's see. I'm sorry. There's one

12 thing -- I want to see the text. "This has been discussed in

13 our calls in the past but I wanted to make sure that it is

14 clear to you. Despite these discussions on our calls, Dr.

15 Meyer and Dr. Kanne stated they were unaware that under the

16 Affordable Care Act, positive outside reads established the

17 minimum medical evidence required for CARD to fill out EHH

18 forms for patients."

19 BY MR. BECHTOLD:

20 Q So do you recall receiving this email from Ms. McNew?

21 A I -- I did not recall it until this moment.

22 Q Okay. But she did, in fact, send it to you, correct?

23 A Yes.

24 Q And it -- you did, in fact, discuss these issues on

25 the telephone with her?

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1 A Yes.

2 Q I'd like to bring your attention now to Exhibit 350.

3 (Witness complies.)

4 A Okay.

5 Q In Exhibit 350 you mention a recent quarterly report

6 to provide some statistics in your declaration. Do you recall

7 that?

8 A Yes.

9 Q Do you recall Mr. Duerk asked you about

10 those -- those figures?

11 A Yes.

12 (Exhibit No. 526 is introduced and identified for the

13 record.)

14 Q I'm handing you Exhibit 526. Could you tell us what

15 that is?

16 (Witness reviews Exhibit No. 526.)

17 A This is a CARD report from -- it's probably the most

18 recent one published in March of this year. Or correction.

19 This is from 2022. This is from last year.

20 Q Okay. Is that the document that -- is that the

21 document that -- to which you're referring to in your

22 declaration?

23 A Yes.

24 Q And how do you know that?

25 A In -- in my statement I say, quote, as of a recent

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1 A Can you restate the question?

2 BY MR. BECHTOLD:

3 Q Would it be fraud for CARD to present the EHH form to

4 SSA based upon a B-reader's positive interpretation of asbestos

5 related disease?

6 A No.

7 MR. DUEK: Object -- same objections. And --

8 BY MR. BECHTOLD:

9 Q If --

10 MR. BECHTOLD: Do you have more?

11 MR. DUEK: -- and move to strike.

12 BY MR. BECHTOLD:

13 Q If you have -- or rather if CARD presents an EHH form

14 to the Social Security -- or to the SSA based upon a positive

15 B-reader's interpretation of asbestos related disease, is that

16 in compliance with the terms of the -- the grants from ATSDR?

17 A Yes.

18 MR. DUEK: Objection. Same objections.

19 Go ahead.

20 BY MR. BECHTOLD:

21 Q If CARD reviewed the -- a patient -- or if

22 CARD -- I'll start over.

23 If CARD reviews a patient's CT scan and makes a -- no

24 finding of a clinical diagnosis of asbestos related disease but

25 a B-reader makes a positive finding of an asbestos related

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1 quarterly report CARD submitted to ATSDR in March 2022, which

2 corresponds to the dates on the report.

3 Q And as you look at that report, are the numbers in

4 your declaration accurate based upon that report?

5 (Witness reviews Exhibit Nos. 350 and 526.)

6 A So the -- yes. Yes. Sorry.

7 Q And which tables are you referring to in Exhibit 526?

8 A I'm looking at Tables 4 and -- Tables 4 and 7.

9 Q And could you explain the meaning of the

10 document -- I mean, the numbers that you're citing?

11 A So I'm looking at the cumulative -- the cumulative

12 totals in both tables. I'm looking specifically at CTs and I

13 am presenting a proportion of abnormal CTs, overall CTs

14 completed.

15 Q And what are those?

16 A Drawing from the table, Table 4 specifically, it's

17 2,769 abnormal CTs detected at CARD, over 4,819

18 CTs completed. And then in Table 7, I'm looking at 1,537

19 abnormal outside CT reads over 4,689 total outside reads.

20 Q Okay. Thanks. Would it be fraudulent for CARD to

21 present the -- an EHH form to the Social Security

22 Administration based on a B-reader's positive interpretation of

23 an asbestos related disease?

24 MR. DUEK: Objection: Foundation, form, calls

25 for a legal conclusion, ultimate issue.

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1 disease, based upon the ATSDR funding grant, is it proper for

2 CARD to present that EHH form to the Social Security

3 Administration?

4 MR. DUEK: Objection: Form, foundation, calls for

5 a legal conclusion, foundation.

6 Go ahead.

7 A Slight correction. I think you meant compared CT to

8 CT, not CT to a -- a B-reader only reads chest -- chest X-rays

9 not --

10 BY MR. BECHTOLD:

11 Q Excuse me. An --

12 A -- but --

13 Q -- an outside reader.

14 MR. DUEK: Same objections.

15 A All right.

16 BY MR. BECHTOLD:

17 Q Let's -- let's just strike that whole thing and start

18 over and get it straight.

19 Okay. If CARD reviews a patient and finds that the

20 patient has no -- no asbestos related disease and an outside

21 reader views a CT and finds a positive interpretation of

22 asbestos related disease and CARD presents that EHH form based

23 upon that outside read to the Social Security Administration,

24 is that in conformance with the ATSDR funding grant?

25 MR. DUEK: Objection: Calls for a legal -- to

<p style="text-align: right;">Page 153</p> <p>1 the extent it calls for a legal conclusion.</p> <p>2 A Yes.</p> <p>3 BY MR. BECHTOLD:</p> <p>4 Q Mr. Duerk asked you about a series of incidents where</p> <p>5 the -- the CARD Clinic presented EHH forms to the Social</p> <p>6 Security Administration based upon -- for individuals that they</p> <p>7 had not diagnosed with asbestos related disease but they</p> <p>8 presented the EHH forms to the Social Security Administration</p> <p>9 because those same individuals had a positive outside read. Is</p> <p>10 that in conformance with the ATSDR grant?</p> <p>11 MR. DUERK: Objection: Foundation, calls for a</p> <p>12 legal conclusion.</p> <p>13 Go ahead.</p> <p>14 A Yes.</p> <p>15 BY MR. BECHTOLD:</p> <p>16 Q You testified that -- that it would be fraud for CARD</p> <p>17 to present the EH form [sic] to Social Security -- Social</p> <p>18 Security Administration based on a B-reader's positive</p> <p>19 interpretation when CARD did not diagnose that individual with</p> <p>20 ARD. Do you recall that testimony?</p> <p>21 A I don't believe I said -- I may -- I may have said</p> <p>22 that and may have to correct that. That doesn't -- I don't</p> <p>23 think that's correct. That's not -- that's an analogous</p> <p>24 situation to your previous line of questions. Outside reader</p> <p>25 sees something, CARD reader does not, correct? And -- and so</p>	<p style="text-align: right;">Page 154</p> <p>1 that's not -- that's not fraud if that person had an EHH form</p> <p>2 turned in -- turned in to SSA.</p> <p>3 Q I'd like to draw your attention back to Exhibit 526,</p> <p>4 on page 1, in the paragraph that begins with Table 1.</p> <p>5 (Witness complies.)</p> <p>6 Q Do you see that paragraph?</p> <p>7 A Yes.</p> <p>8 Q Could you tell us what that paragraph says?</p> <p>9 A So this is describing the ways that a patient could</p> <p>10 have an EHH form completed and -- but still not have -- have a</p> <p>11 diagnosis from CARD.</p> <p>12 Q Okay. And this is a situation that ATSDR's familiar</p> <p>13 with, correct?</p> <p>14 A Yes.</p> <p>15 Q What are the ways that an individual can be eligible</p> <p>16 for Medicare through the EHH designation criteria but not be</p> <p>17 clinically diagnosed with an ARD By CARD?</p> <p>18 MR. DUERK: Objection: Form, foundation, no prior</p> <p>19 disclosure, calls for a legal conclusion.</p> <p>20 A Three ways. One, a positive chest X-ray B-read.</p> <p>21 Two, a positive CT read by an outside radiologist. And three,</p> <p>22 a documented diagnosis of an asbestos related cancer listed out</p> <p>23 on page 1.</p> <p>24 BY MR. BECHTOLD:</p> <p>25 Q Mr. Duerk asked you about a patient with a rib</p>
<p style="text-align: right;">Page 155</p> <p>1 fracture. If that patient with a rib fracture had been -- an</p> <p>2 EHH form forwarded to the Social Security Administration based</p> <p>3 upon a positive B-read, would your opinions still be the same?</p> <p>4 MR. DUERK: Objection: Form, foundation, calls</p> <p>5 for a legal conclusion.</p> <p>6 A A patient with a chest -- I'm just confirming the</p> <p>7 scenario, hypothetical scenario. The -- there's a patient with</p> <p>8 a rib fracture detected by an outside reader on CT, correct?</p> <p>9 BY MR. BECHTOLD:</p> <p>10 Q So I think the -- well, we'll set the scenario. A</p> <p>11 patient who CARD has not diagnosed with an asbestos related</p> <p>12 disease, a patient who does have a rib fracture noted by an</p> <p>13 outside reader but -- and a patient who has a positive outside</p> <p>14 read from asbestos related disease.</p> <p>15 MR. DUERK: Objection: Inaccurate hypothetical</p> <p>16 based on the question that I posed.</p> <p>17 BY MR. BECHTOLD:</p> <p>18 Q Go ahead.</p> <p>19 A So as long as there is no asbestos related finding by</p> <p>20 an outside reader, I would say yeah, that still qualifies for</p> <p>21 an EHH.</p> <p>22 Q So -- so if an individual has a positive outside</p> <p>23 finding by a -- by an outside reader, it qualifies for an EHH?</p> <p>24 MR. DUERK: Inaccurate hypothetical. Objection.</p> <p>25 A If it's asbestosis, pleural plaque, or pleural</p>	<p style="text-align: right;">Page 156</p> <p>1 thickening, yes.</p> <p>2 BY MR. BECHTOLD:</p> <p>3 Q Okay. So what are the conditions under which CARD</p> <p>4 may present an EHH form to the Social Security Administration</p> <p>5 based upon an outside read?</p> <p>6 MR. DUERK: Asked and answered.</p> <p>7 A An asbestos related finding as described in</p> <p>8 the -- the Affordable Care Act and a NOFO and it's asbestosis,</p> <p>9 pleural plaque, or pleural thickening.</p> <p>10 BY MR. BECHTOLD:</p> <p>11 Q Even though CARD may not have diagnosed that patient</p> <p>12 with an asbestos related disease?</p> <p>13 MR. DUERK: Objection: Incomplete facts,</p> <p>14 foundation.</p> <p>15 Go ahead.</p> <p>16 A Yes.</p> <p>17 BY MR. BECHTOLD:</p> <p>18 Q So when CARD knowingly submits an EHH form for a</p> <p>19 patient for whom it didn't -- specifically did not make a</p> <p>20 determination of an asbestos related disease, knowingly submits</p> <p>21 that EHH form to the SSA based upon a B-reader's positive</p> <p>22 interpretation, is that contrary to the wishes of the ATSDR?</p> <p>23 MR. DUERK: Objection: Foundation, form.</p> <p>24 A No.</p> <p>25 BY MR. BECHTOLD:</p>

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1 Q What does the ATSDR want the CARD Clinic to do?

2 A As stated in the NOFO, if the outside reader detects

3 one of those three conditions but the CARD physician does not,

4 then that patient still qualifies for -- to have an EHH

5 submitted. And conversely, if both the outside readers and the

6 CARD reader agree, great. An EHH gets submitted. If the CARD

7 reader detects one of those three conditions and the outside

8 reader does not, it -- it still becomes an EHH for that

9 patient.

10 Q Does it matter to -- rather, is it relevant to the

11 ATSDR what the -- some radiologist in Kalispell and Libby felt

12 about the CARD's diagnostic rate?

13 MR. DUERK: Objection: Vague.

14 Go ahead.

15 A So I'm not aware of what those radiologists are

16 saying. I suppose ATSDR would take it into account but at the

17 same time, I mean, it's -- it could be hearsay, I guess. I

18 mean, I -- that's kind of a -- that's a hypothetical, I guess.

19 BY MR. BECHTOLD:

20 Q Do you recall in the -- in your -- when I was talking

21 with you before an investigation by the OIG, the Office of

22 Inspector General, in 2015 based upon local doctors complaining

23 about the CARD's diagnostic rate? Do you recall that

24 testimony?

25 A Yes.

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1 Q In terms of --

2 MR. DUERK: And we don't need to move.

3 BY MR. DUERK:

4 Q -- but in terms of the hypothetical I posed, the

5 hypothetical is this. I'd like you to assume that there is a

6 patient with a fractured rib. That is her only finding on a CT

7 scan. There is no finding of an asbestos related condition

8 according to the B-readings also. CARD has not diagnosed that

9 patient with asbestos related disease. In fact, CARD has

10 determined that that patient does not have a diagnosis of an

11 asbestos related disease. So to be blunt and to summarize, no

12 physician at any level from any institution anywhere has

13 diagnosed this person with an asbestos related condition at

14 all.

15 Are you saying that it's proper to submit that patient for

16 Medicare?

17 A So I -- I may have misunderstood.

18 MR. BECHTOLD: First, I'd like to object. I don't

19 think we did recross. And object to the form of the

20 question.

21 A So the answer would be to me that sounds like -- that

22 sounds like an error coming out of EHH for that particular

23 hypothetical patient.

24 BY MR. DUERK:

25 Q Right. And in terms of the agency, the government

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1 Q And there was an investigation, correct?

2 A Yes.

3 Q And what was the result of the investigation?

4 A The investigation was dropped.

5 Q And do you know why?

6 MR. DUERK: Objection: Beyond the scope of my

7 examination. This is not rebuttal or redirect.

8 MR. BECHTOLD: Go ahead.

9 A OIG dropped it. They didn't find enough evidence to

10 pursue it was my understanding.

11 MR. DUERK: Objection: Hearsay.

12 BY MR. BECHTOLD:

13 Q How long have you known that CARD submits EHH forms

14 to the Social Security Administration based solely upon a

15 positive outside read?

16 A So I would say since the grant was initially stood

17 up, www.GeorgiaReporting.com, these are criteria that are in the -- the

18 original NOFO.

19 Q So that is something that the ATSDR intended CARD to

20 do from the beginning?

21 A Yes.

22 MR. BECHTOLD: I have nothing further.

23 MR. DUERK: I have a few follow-ups.

24 FURTHER EXAMINATION

25 BY MR. DUERK:

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1 entity, the individuals that would look at that EHH form, an

2 EHH form that you don't regularly see. Fair?

3 A Yes.

4 Q In terms of the individuals responsible for

5 determining whether that person is eligible for Medicare

6 benefits, that is the Social Security Administration field

7 office in Kalispell to the best of your knowledge, correct?

8 A Yes.

9 Q And in terms of their say on whether or not that

10 would be proper under the Affordable Care Act, EHH Medicare

11 provisions, that is a decision left to SSA, correct, not you?

12 A Yes.

13 MR. DUERK: Nothing further.

14 MR. BECHTOLD: That concludes.

15 THE VIDEOGRAPHER: This concludes the deposition.

16 The time is 2:41.

17

18 (Deposition concluded at approximately 2:41 p.m.)

19

20 (Pursuant to Rule 30(e) of the Federal Rules of Civil

21 Procedure and/or O.C.G.A. 9-11-30(e), signature of the witness

22 was waived.)

23

24

25

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1 STATE OF GEORGIA)
2 COUNTY OF DEKALB)
3

4 I hereby certify that the foregoing transcript was
5 reported, as stated in the caption, and the questions and
6 answers thereto were reduced to typewriting under my direction;
7 that the foregoing pages represent a true, complete and correct
8 transcript of the evidence given upon said hearing, and I
9 further certify that I am not of kin or counsel to the parties
10 in the case; am not in the employ of counsel for any of said
11 parties; nor am I in any way interested in the result of said
12 case.



13 _____/s/_____
14

15 Lori Johnston
16

17 CCR 5682-4498-7599-2576
18
19
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Page 162

1 DISCLOSURE OF NO CONTRACT

2

3 I, Lori Johnston, do hereby disclose pursuant to Article
4 10.B of the Rules and Regulations of the Board of Court
5 Reporting of the Judicial Council of Georgia that Elizabeth
6 Gallo Court Reporting, LLC was contacted by the party taking
7 the deposition to provide court reporting services for this
8 deposition and there is no contract that is prohibited by
9 O.C.G.A. Section 15-14-37(a) and (b) or Article 7.C of the
10 Rules and Regulations of the Board for the taking of this
11 deposition.

12

13 There is no contract to provide court reporting services
14 between Elizabeth Gallo Court Reporting, LLC or any person with
15 whom Elizabeth Gallo Court Reporting, LLC has a principal and
16 agency relationship nor any attorney at law in this action,
17 party to this action, or any person having a financial interest in
18 this action. Any and all financial arrangements beyond our
19 usual and customary rates have been disclosed and offered to
20 all parties.

21

22 This 30th day of May 2023.



23

_____/s/_____
24

25 Lori Johnston

CCR 5682-4498-7599-2576

Page 1	Page 2
<p>IN THE UNITED STATES DISTRICT COURT</p> <p>FOR THE DISTRICT OF MONTANA</p> <p>MISSOULA DIVISION</p> <p>-----</p> <p><small>Heather Hillmann - 05/16/2023</small></p> <p>VIDEO DEPOSITION OF HEATHER HILLMANN</p> <p>May 16, 2023</p> <p>-----</p> <p>BNSF, Case No.</p> <p>Plaintiff, CV-19-40-M-DLC</p> <p>vs.</p> <p>CARD,</p> <p>Defendant.</p> <p>-----</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 KNIGHT NICASTRO MACKAY, LLC</p> <p>4 By W. Adam Duerk, Esquire</p> <p>5 283 W. Front Street, Suite 203</p> <p>6 Missoula, Montana 59802</p> <p>duerk@knightnicastro.com</p> <p>On behalf of BNSF.</p> <p>U.S Department of Justice</p> <p>United States Attorney's Office</p> <p>By Michael Kakuk, Assistant U.S. Attorney</p> <p>901 Front Street, Suite 1100</p> <p>Helena, Montana 59626</p> <p>michael.kakuk@usdoj.gov</p> <p>On behalf of the SSA.</p> <p>BECHTOLD LAW FIRM, PLLC</p> <p>By Timothy Bechtold, Esquire</p> <p>PO Box 7051</p> <p>Missoula, Montana 59807</p> <p>tim@bechtoldlaw.net</p> <p>On behalf of CARD.</p> <p>ALSO PRESENT: Sarah Berry</p> <p>Social Security Administration</p> <p>Dwayne Beuthel</p> <p>Videographer</p>
Page 3	Page 4
<p>1 Pursuant to Notice, the Video Deposition of HEATHER</p> <p>2 HILLMANN, called by the Plaintiff, taken on May 16,</p> <p>3 2023, commencing at 10:32 AM Mountain Time before</p> <p>4 Annie Sager, Court Reporter and Notary Public within</p> <p>5 and for the State of Colorado.</p> <p>6</p> <p>7 EXAMINATION PAGE</p> <p>8 Mr. Duerk: 6, 159</p> <p>9 Mr. Bechtold: 109, 169</p> <p>10</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 Exhibit 135 Subpoena 5</p> <p>13 Exhibit 136 Declaration 106</p> <p>14 Exhibit 137 Statement of Disputed Facts 95</p> <p>15 Exhibit 138 E-mail 66</p> <p>16 Exhibit 139 E-mail 76</p> <p>17 Exhibit 140 HI 00803.001 102</p> <p>18 Exhibit 141 HI 00803.050 102</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: The time is 10:32.</p> <p>3 Today is May 16th, 2023. This begins the</p> <p>4 video-recorded deposition of Heather Hillmann</p> <p>5 taken in the matter of BNSF versus CARD.</p> <p>6 This deposition is being taken at</p> <p>7 1961 Stout Street, Denver, Colorado, 80202. The</p> <p>8 court reporter today is Annie Sager. The</p> <p>9 videographer is Dwayne Beuthel.</p> <p>10 Counsel will introduce themselves and</p> <p>11 the parties they represent beginning with the</p> <p>12 plaintiff's counsel first.</p> <p>13 MR. DUERK: Adam Duerk for Relator BNSF.</p> <p>14 MR. BECHTOLD: This is Tim Bechtold on</p> <p>15 behalf of the Center for Asbestos Related</p> <p>16 Disease.</p> <p>17 MR. KAKUK: Michael Kakuk, U.S.</p> <p>18 Department of Justice.</p> <p>19 MS. BERRY: Sarah Berry for the</p> <p>20 Social Security Administration.</p> <p>21 THE VIDEOGRAPHER: Will our</p> <p>22 court reporter please swear in the deponent.</p> <p>23 (WHEREUPON, the oath was administered by</p> <p>24 the court reporter.)</p> <p>25 WITNESS RESPONSE: Yes, I do.</p>

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1 THE COURT REPORTER: Thank you. Go
2 ahead.
3 THE VIDEOGRAPHER: You may begin.
4 HEATHER HILLMANN,
5 a witness in the above-entitled proceedings,
6 after having been first duly sworn,
7 testified under oath as follows:
8 MR. KAKUK: Gentlemen, at the outset of
9 this I just want to point out that per our
10 e-mail yesterday, Ms. Hillmann is here on behalf
11 of SSA specifically for requests 17 through 22,
12 25 through 29, and 36 through 39.
13 We believe these are essentially the
14 factual requests that were in the 30(b)(6)
15 deposition notice. The social security agency
16 has designated somebody else for the policy
17 questions.
18 MR. DUERK: And in terms of the notice
19 of deposition, I am assuming we are taking about
20 the same paragraphs that align with what we will
21 mark as Exhibit 135, the subpoena to SSA for
22 30(b)(6) testimony.
23 (WHEREUPON, Deposition Exhibit 135
24 marked for identification by the reporter.)
25 MR. KAKUK: That's correct. Thank you.

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1 Q Ms. Hillmann, have you had your deposition taken
2 in the past?
3 A No.
4 Q Okay. I will go over a few ground rules today.
5 The most important is if any of my
6 questions are unclear or you need a break for any
7 reason, including speaking with counsel in the
8 room, will you just indicate that to me so that we
9 can take a break?
10 A Yes.
11 Q All right. Ms. Hillmann, what is your
12 professional title?
13 A My professional title is subject matter expert
14 Medicare lead, and I am also a data exchange
15 coordinator.
16 Q And who do you work for?
17 A Social Security Administration.
18 Q How long have you been employed with the
19 Social Security Administration?
20 A 21 years in September.
21 Q Where have you primarily been based?
22 A Denver.
23 Q Okay. And what are some of your job
24 responsibilities related to your position at SSA?
25 A Training the field offices on different policy,

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1 MR. DUERK: Thank you.
2 MR. KAKUK: I understand that factual
3 issues can bleed into policy questions. I am
4 assuming that I will have to object if something
5 is outside the scope of the requests if we get
6 into any policy issues.
7 I just want us all to be clear from the
8 get-go that what that means on behalf of the
9 agency is that the agency was not required to
10 prepare Ms. Hillmann for that request, and any
11 answer that Ms. Hillmann chooses to give is not
12 on behalf of the agency.
13 So if I just say objection, scope, we
14 all understand moving forward what that means,
15 and then you can continue on with the questions
16 and answers.
17 Does that make sense?
18 MR. DUERK: It does to relator.
19 MR. BECHTOLD: Yes.
20 MR. KAKUK: Thank you.
21 EXAMINATION
22 BY MR. DUERK:
23 Q Would you please state your full legal name
24 spelling your last name.
25 A Heather Marie Hillmann, H-I-L-L-M-A-N-N.

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1 providing additional support in regards to data
2 exchange and Medicare.
3 Q Ms. Hillmann, it is my understanding that you've
4 been offered by the Social Security Administration
5 as the 30(b)(6) deponent pursuant to a subpoena
6 issued to the SSA?
7 A Yes.
8 Q All right. Have you seen that subpoena and the
9 topics referenced?
10 A I have.
11 Q Okay. And I have marked the subpoena itself as
12 Exhibit 135.
13 Do you have a copy of that in front of you?
14 A I do.
15 Q I think I can shoot through this pretty quickly,
16 but it's my understanding that you were prepared
17 to address paragraphs 17 to 22?
18 A Correct.
19 Q Paragraphs 25 to 29?
20 A Yes.
21 Q And paragraphs 36 to 39 as referenced in this
22 subpoena, is that your understanding also?
23 A Yes.
24 Q Ms. Hillmann, what did you do in order to prepare
25 to address these topics today?

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1 A I reached out to a number of components in
2 headquarters, the office of information systems
3 and policy, and then the office of program support
4 as well and then the local Kalispell office in
5 addition to reaching out to my former Medicare
6 counterpart that mentored me and had a lot to do
7 with EHH cases, and she is now retired. Her name
8 is Kathy Will, formerly Kathy Suarez.

9 Q In terms of any other SSA employees, do you recall
10 the names of any individual SSA employees that
11 have worked at the Kalispell field office in
12 Montana?

13 A Terra Whiteman, Sonya Hymas, and there is a number
14 of other field office technicians, but I don't
15 have them all memorized. I do about six different
16 states.

17 Q Ms. Hillmann, was it your intent and understanding
18 in preparing for this 30(b)(6) deposition that you
19 were to seek and gather information and facts
20 related to the topics that you intend to address
21 today from a variety of different sources, both
22 human sources as well as paper sources?

23 A Correct.

24 Q And were you able to successfully accomplish that
25 task in your view?

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1 Q Ms. Hillmann, I will be referencing Exhibit 76 as
2 well as another exhibit under the program
3 operations manual system as the POMS today.

4 A Okay.

5 Q Does that make sense to you?

6 A Yes.

7 Q What generally is the POMS, if you can describe it
8 for me?

9 A It's basically our policy instructions and our
10 technicians instructions on how to process claims.

11 Q Okay. In terms of Exhibit 76, is this
12 HI 00803.050 titled developing medical requirement
13 for entitlement to EHH Medicare?

14 A Yes.

15 Q Is this one of the POMS sections that you reviewed
16 in preparation for your testimony?

17 A Correct.

18 Q If you would look through Exhibit 76 related to
19 the enumerated POMS section at the top of page 1,
20 does this appear to be a true and accurate copy of
21 the POMS for the medical requirement for
22 entitlement to EHH Medicare?

23 A Yes.

24 Q I will move to admit if Exhibit 76 hasn't already
25 been admitted.

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1 A I was.

2 Q All right. In terms of the materials that you
3 reviewed, the paper records, if you could give me
4 a survey or a basic understanding of what kind of
5 paper records you reviewed that would be helpful.

6 A Okay. I reviewed different policies that have
7 been in effect since roughly around 2010, and that
8 was HI 00803.50, HI 00803.001, emergency message
9 10042REV, and then a variety of e-mail contacts
10 back and forth regarding training for
11 social security employees.

12 Q All right. And did these written materials help
13 inform the facts that you are going to establish
14 for the record today?

15 A Absolutely.

16 Q I would like to look first at what has been marked
17 previously as Exhibit 76. You have a notebook in
18 front of you. Behind tab 3 I believe you should
19 find Exhibit 76.

20 Do you recognize this?

21 A Yes, I do.

22 Q And what is it?

23 A This is HI 00803.050. That is our policy
24 instructions for our social security technicians
25 for processing EHH claims.

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1 In terms of the POMS, what is the
2 significance of this particular section?

3 A The significance of this particular section is
4 just these are instructions for the technicians
5 that are processing the EHH claims to follow.

6 Q Okay.

7 A It's the required documentation they have to
8 follow.

9 Q And in terms of those technicians, are we talking
10 about the SSA employees who may be working at the
11 Kalispell field office in Montana?

12 A Yes.

13 Q All right. Is this essentially the set of working
14 instructions or their policy for how to look at
15 EHH forms?

16 A This is their instructions on how to process the
17 claim.

18 Q The claim itself?

19 A Uh-huh.

20 Q Okay. If you would please read section A under
21 medical requirement for entitlement to EHH
22 Medicare that would be helpful.

23 A "An individual exposed to environmental health
24 hazards (EHH) in Lincoln County, Montana, must
25 meet a medical requirement for entitlement to EHH

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Medicare. He or she must have been diagnosed with an asbestos-related disease (ARD) established by certain diagnostic methods."

Q Ms. Hillmann, is it your understanding that this policy is the same policy that has been in place for at least the last decade related to Medicare claims under the EHH program?

A Yes.

Q Okay. What is the next section titled?

A Developing and documenting medical requirement.

Q Just generally, Ms. Hillmann, what does this section address?

A This section addresses how the technician would address getting the required forms to process the claim.

Q All right. And what are those required forms?

A Depending on the type of claim that we are taking, if it's EHH Medicare, we are obtaining one 827, SSA-827 medical release form, and we are sending that out with the EHH checklist to the medical provider.

If it involves disability, we obtain two signed SSA-827s which is the medical release form, and then we also additionally send that out with the EHH checklist to the medical provider.

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different names related to technicians in the Kalispell field office by the time your testimony airs.

One of those names is Sonya Hymas or Sonya Peterson. I believe she had several different last names during that period.

To the best of your knowledge, was Sonya Hymas an EHH technician in the Kalispell field office?

A I can probably speak on that in the last couple of years that I have gotten to know her and know that she takes Medicare claims. I can't specifically tell you if she has taken EHH claims, but I'm assuming that she has within that field office.

Q Fair enough.

So is it fair to say that it's the EHH field office's responsibility for sending these release forms to the CARD clinic to make sure that the patients have authorized a release of their medical information back to the Social Security Administration related to EHH claims or how does that work?

A Okay. So the medical release form goes with the EHH checklist to give us authorization for the medical provider to actually complete the form and

Page 14

Q All right. And just so that we are on the same page with the jury here, in terms of the medical provider, is it fair to say that in EHH Medicare claims or social security claims involving the CARD clinic, the medical provider would be CARD?

A For CARD claims, yes. They're not the only ones that take in this claim. There's other physicians.

Q Right.

A Yes.

Q Understood. And during the course of this litigation, I will represent to you that we will only be focusing on EHH claims related to CARD.

A Okay.

Q Okay?

A Uh-huh.

Q So if you could describe who is responsible for sending out those SSA-827 forms to CARD that would be helpful.

A Those are field office technicians that take claims, so those are claims specialists or claim technicians or technical experts within the Kalispell field office.

Q All right. Ms. Hillmann, I will represent to you that the jury will have seen or heard several

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send that back to social security.

Q Got it.

A Yeah.

Q Okay. So once these SSA-827 forms are sent to the medical provider, what happens next?

A Could you repeat that question? I'm sorry.

Q Sure. I am just trying to give the jury an idea of step-by-step what happens in the process of obtaining EHH forms.

A Okay.

Q And processing these Medicare claims.

A Okay. So once, you know, we actually have the claimant within the office or on the phone let's say, for instance, we are going to complete step 1 which is their identifying information, their social security number, and then their name and their date of birth which is at the top of the EHH checklist. In addition, we complete the 827 and leave, you know, the bottom for the claimant to sign.

Once we obtain that, we send that medical release form and the EHH checklist to the CARD clinic or whatever physician that they have, and then once that information is obtained from the CARD clinic or whatever physician sends that back,

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1 that is when we are able to start the claims
2 processing.

3 Q All right. Just so that I'm as clear as I can be
4 in front of a jury, I am looking at page 4 of
5 Exhibit 76.

6 Is this a copy of a blank EHH form in terms
7 of an exemplar?

8 A Yes.

9 Q Okay. And is this the form that the EHH field
10 technician would fill out in terms of step 1, the
11 top box, with the CARD patient's name,
12 social security number and date of birth?

13 A Yes. That is the only box that they complete.

14 Q Okay. Is there any other information or any other
15 box on this form that the patient would complete
16 with SSA?

17 A No.

18 Q Okay.

19 A That would go to the physician.

20 Q In terms of the box under step 2 on page 4, is
21 there any information here that would be completed
22 by the SSA?

23 A No. We are not expertised in that area.

24 Q Okay. So after step 1 is complete, box 1 is
25 complete, the EHH form then goes to CARD in this

Page 19

1 A I can honestly just say that, you know, once we
2 have a completed checklist that shows that there
3 is a diagnosis underneath section 1881A of the act
4 which is with a completed form, then we would be
5 able to process this claim once step 2 and step 3
6 are completed. We are not medical experts like
7 I've previously mentioned. We don't get into the
8 diagnosis or the diagnosis codes.

9 Q All right.

10 A Yeah.

11 MR. KAKUK: Mr. Duerk, I'm sorry. I
12 might have misunderstood. Were you talking
13 about section 2 of the form or section 2 of the
14 policy?

15 MR. DUERK: I was talking about
16 section 2 of the form.

17 MR. KAKUK: Okay.

18 MR. DUERK: And I was about to go into
19 section 2 of the policy.

20 MR. KAKUK: Apologize for anticipating.

21 MR. DUERK: Okay. No problem.

22 Q Ms. Hillmann, let's go about it this way. I'll
23 reference section 2 of the policy.

24 A Okay.

25 Q Which I believe corresponds to section 2 of the

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1 case, is that fair?

2 A Correct.

3 Q All right. What happens at CARD with this EHH
4 checklist to the extent that you know?

5 A They complete it to the best of their ability
6 following section 1881A of the act. We don't get
7 involved past that point. We are not medical
8 experts, and that's outside the scope of our jobs.

9 Q All right. And in fact, is that reflected in this
10 section of the POMS related to what is supposed to
11 happen with the EHH checklist?

12 MR. KAKUK: Objection, scope.

13 A Sorry.

14 MR. KAKUK: Go ahead and answer.

15 Q Go ahead.

16 A I think it's just pretty laid out and it's pretty
17 clear in there what our job roles are within the
18 policy.

19 Q All right. Let's go about it this way.

20 Does section 2 titled EHH checklist set out
21 your understanding of the goals and job
22 responsibilities for what is going to happen with
23 this EHH checklist at SSA?

24 MR. KAKUK: The same objection.

25 Q Okay.

Page 20

1 form, but to be clear, if we could look at the
2 policy itself, do you see the section titled EHH
3 checklist?

4 A Yes.

5 Q Would you please read that, the purpose of the EHH
6 checklist.

7 A "The purpose of the EHH Checklist is to obtain
8 information from the claimant's medical source
9 regarding the claimant's diagnosis and presence in
10 Lincoln County, Montana. The claims
11 representative (CR) will use the completed EHH
12 Checklist to determine if the claimant's condition
13 meets the medical requirement. The EHH Checklist
14 may also provide evidence of presence in Lincoln
15 County, Montana. (For policy on using the EHH
16 Checklist as proof of presence in Lincoln County,
17 Montana, see HI 00803.040B and HI 00803.040C.)
18 See images of the EHH Checklist and cover notice
19 in HI 00803.050B.3 in this section."

20 Q All right. So a couple of general questions here
21 about the EHH forms and the facts that you are
22 aware of related to how these forms are processed.

23 Is it your understanding based on the facts
24 related to you by EHH technicians and field
25 personnel that any information about a medical

Page 21

1 diagnosis related to these EHH forms for CARD
 2 patients is to be placed on section 2 of the EHH
 3 form by the CARD physicians or the CARD medical
 4 provider?
 5 A Correct.
 6 Q Okay. And in terms of any direction, training,
 7 instruction, teaching, on-site supervision, any
 8 interaction with CARD employees at the CARD
 9 facility, does the SSA provide any training or any
 10 teaching or any instruction by any name to CARD
 11 about how to complete an EHH checklist other than
 12 what is shown here in these POMS sections?
 13 A No. And I have actually checked with other
 14 components including the Kalispell office, and
 15 that has never been a former practice.
 16 Q Okay. So to the best of your knowledge as the
 17 30(b)(6) deponent, based on your review of
 18 information in both printed form and interviews
 19 with SSA field staff and other SSA employees, is
 20 it your understanding that SSA has ever taught
 21 CARD how to fill out an EHH form in any regard
 22 outside of what is included in these POMS?
 23 A No.
 24 Q Okay. In terms of the form itself, and I'm
 25 looking at page 4 on Exhibit 76, what if, based on

Page 23

1 Q Okay. If you could just generally share with me
 2 the information that was covered in that emergency
 3 policy that would be helpful.
 4 A It basically laid out the guidelines of
 5 HI 00803.50 and that if the environmental health
 6 hazard checklist was not completed correctly
 7 meaning that there was no diagnosis, no diagnosis
 8 date, and it doesn't have to necessarily -- like
 9 if they marked a diagnosis, but then there is not
 10 a diagnosis date, we still have to deny the claim.
 11 Q All right.
 12 A Yeah.
 13 Q So without a diagnosis of an asbestos-related
 14 condition, a CARD patient simply would not receive
 15 Medicare eligibility or Medicare benefits
 16 according to the SSA?
 17 A Correct.
 18 Q Okay. Now, in terms of the SSA's reliance on
 19 these forms, does the SSA do any fact-checking or
 20 independent investigation or ask for any other
 21 records to support a claim for Medicare benefits
 22 other than this EHH checklist?
 23 A Not to my knowledge. There is no additional
 24 Medicare benefits quite like this, but our claims
 25 technicians, I do want to state, you know, we

Page 22

1 the facts that you're aware of, an EHH form would
 2 be returned to the Social Security Administration
 3 field office in Kalispell and there was a section
 4 left blank, for example, if a form failed to
 5 identify an asbestos-related condition or
 6 conditions and its date of diagnosis, if a form
 7 was lacking any information about the diagnosis or
 8 diagnoses of asbestos-related conditions, would
 9 the SSA be able to process that claim and approve
 10 Medicare benefits for that CARD patient?
 11 A No.
 12 Q Why not?
 13 A Because they have to meet the listing and they
 14 have to have a date of diagnosis, they have to
 15 have the printed name of the physician, the
 16 physician's signature, and the date listed as
 17 well, as well as step 3, the information within
 18 step 3 and step 2.
 19 And we have actually put this out in policy
 20 in an emergency message, it was 10042REV that gave
 21 those specific instructions, and I believe it came
 22 out in 2010, archived in 2011, the latter part of
 23 2011, and it was a public-facing policy, so the
 24 public did have access as well as CARD to that
 25 policy online.

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1 don't -- we don't check -- we are not medical
 2 experts, so just like with our disability claims,
 3 our claims technicians are not going to be the
 4 ones checking medical references, checking,
 5 you know, the medical evidence. That is not their
 6 job and that is outside of the scope of their job.
 7 Q All right. And to the best of the information
 8 you've been able to gather, the boundaries of
 9 SSA's job and the procedure for what SSA will do
 10 and will not do vis-a-vis these checklists is
 11 communicated to CARD?
 12 A I don't know if it's communicated to CARD, but
 13 it's communicated to our employees, and that's who
 14 we are responsible for.
 15 Q All right.
 16 A Yeah.
 17 Q In terms of these program operation manual systems
 18 or the POMS, are these available to the public
 19 online?
 20 A They are.
 21 Q Okay. And in terms of the emergency policy that
 22 you just referenced, I'm assuming that that was
 23 made available to any member of the public online
 24 as well?
 25 A Absolutely.

Page 25

1 Q Okay. So page back to page 4 of Exhibit 76 with
 2 this EHH form, if the EHH form doesn't include a
 3 diagnosis related to asbestos exposure, what
 4 happens at that stage in the process when the SSA
 5 field office gets the form based on the
 6 information you've reviewed?
 7 A If the SSA field office gets this form and we do
 8 not have a diagnosis that's listed within the
 9 checklist, then it's a deny.
 10 Q All right. And what would be some examples of
 11 denials that might occur for diagnoses that don't
 12 show up in the checklist if you could give me a
 13 for instance.
 14 A Well, they don't meet the medical requirements of
 15 the policy, so then it would be a denial based off
 16 of that. We have a special code for it.
 17 Q Okay.
 18 A Uh-huh.
 19 Q And so diagnoses that don't meet the medical
 20 requirement, I'm assuming these would be diagnoses
 21 of conditions that don't have anything to do with
 22 asbestos exposure, for example, is that fair?
 23 A Well, I mean, I can't speak on that. If we don't
 24 have a completed form with, you know, the
 25 impairments that are listed here and they haven't

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1 BY MR. DUERK:
 2 Q Okay. Now, in terms of the rest of this POMS
 3 policy, I think we have read the EHH checklist
 4 heading. If you could go through each of the
 5 steps that -- is it FO 872?
 6 What does FO 872 stand for?
 7 A That's the field office for Kalispell, Montana.
 8 Q Okay. If you could go through the steps that the
 9 field office in Kalispell takes to obtain a
 10 completed EHH checklist that would be helpful.
 11 A And you are wanting me to start on page 2?
 12 Q I am.
 13 A Okay. "FO 872 takes the following actions to
 14 complete an EHH Checklist: Complete step 1
 15 (identify the individual) on the EHH Checklist;
 16 fill in the FO's fax number on the cover notice;
 17 and forward the EHH Checklist with the cover
 18 notice to the claimant's medical source with a
 19 signed SSA-827. The name of source will appear in
 20 'Remarks' in the MCS claims path or the paper
 21 application."
 22 Q In terms of that note, just so the jury isn't left
 23 scratching their heads, what does that mean, what
 24 does that indicate, the name of source will appear
 25 in the "remarks" in the MCS claims path or the

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1 marked that or they haven't even marked the date
 2 of diagnosis, I mean, that would be a denial.
 3 Q Okay.
 4 A Yeah. Because the physicians are required to be
 5 following section 1881A of the act.
 6 Q In terms of any medical training that you're aware
 7 of possessed by any of these field technicians,
 8 are any of the field technicians at the Kalispell
 9 office medical doctors?
 10 A No.
 11 Q Are any of the field technicians in the Kalispell
 12 office pulmonologists?
 13 A No.
 14 Q Are any of them radiologists?
 15 A No.
 16 Q Are any of them medical professionals of any
 17 designation as far as you're aware?
 18 A No.
 19 Q Okay. Is it fair to say that the Kalispell field
 20 office personnel are relying on CARD providers,
 21 CARD doctors, to provide all of the accurate, all
 22 the true and accurate information related to an
 23 asbestos-related diagnosis in this EHH form?
 24 MR. KAKUK: Objection, scope. Go ahead.
 25 A Yes.

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1 paper application?
 2 A The name of the medical provider or the name of
 3 the medical source.
 4 Q Okay. Gotcha.
 5 And so in terms of remarks here, would an
 6 example of the provider just be CARD Clinic,
 7 Libby, Montana, or something to that effect?
 8 A With their address.
 9 Q Understood.
 10 A Uh-huh.
 11 Q Okay. Anything else that I failed to ask about
 12 this first part, section A of the POMS?
 13 A No.
 14 Q Okay. So what happens when the claimant's medical
 15 source gets the EHH form?
 16 A So the claimant's medical source will take the
 17 following actions to complete and return the EHH
 18 checklist. Complete step 2, identify the
 19 asbestos-related condition and its date of
 20 diagnosis, and step 3, identify presence in
 21 Lincoln County, Montana, fill in the printed name,
 22 physician's signature and date, and return it by
 23 fax to the number provided on the cover notice or
 24 mail it to the Kalispell field office located at
 25 275 Corporate Drive, Ashley Square Mall, Suite D,

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1 Kalispell, Montana, 59901.

2 Q All right. Thank you.

3 A Uh-huh.

4 Q There is another note here that I think touches on

5 the issue of whether any supporting medical

6 evidence needs to be provided by CARD. If you

7 could first read it, then I have a few questions.

8 A Okay. "The medical source does not need to

9 provide the supporting medical evidence."

10 Q Okay. In terms of any other medical evidence that

11 is submitted along with the EHH form, based on

12 your review of the facts, your interviews in the

13 case, your review of the paperwork, to the best of

14 your understanding, is there anything other than

15 the EHH form that is submitted to the field

16 office, for example, any CT interpretive reports,

17 any medical records, any notes from the doctor so

18 to speak, or is it just the EHH form to the best

19 of your understanding based on the factual

20 information you've reviewed?

21 A It's just the EHH checklist.

22 Q Understood. Okay. All right.

23 If we could turn to page 3 of Exhibit 76.

24 It appears there is a section here about what the

25 Kalispell field office will do to store the

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1 A Yes.

2 Q Okay. Just a couple of questions. There is a

3 reference to the MBR here on page 3.

4 What is the MBR?

5 A That is the master beneficiary record, so that's

6 going to be a record that is established for

7 Medicare beneficiaries, retirement beneficiaries,

8 disability beneficiaries and survivor

9 beneficiaries.

10 Q Okay. The other acronym NDRed, what is that

11 reference?

12 A That's an electronic file, and that actually

13 stands for -- there is a lot of acronyms. Just

14 give me one second.

15 Q It's the government. It's okay.

16 A Honestly, I can't remember off the top of my head.

17 I wish they had spelled it out like they did with

18 the Disability Collection System.

19 Q That's okay.

20 A But it's essentially what that electronic file

21 is for is for most of our Medicare retirement

22 survivors insurance beneficiaries. For our

23 disability claimants we collect that information

24 in EDCS which is the Electronic Disability

25 Collection System.

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1 completed EHH checklist.

2 Is that a fair representation?

3 A Yes.

4 Q Okay. Would you please read this section.

5 A Field office 872, which is the Kalispell field

6 office, "will take the following actions to store

7 the completed EHH Checklist: Obtain a bar code fax

8 coversheet via the Electronic Disability Collect

9 System," which is EDCS.

10 "And fax the completed EHH Checklist into

11 the Electronic Folder (EF) if the claimant is also

12 applying for disability benefits or has a pending

13 disability claim; and retain the completed EHH

14 Checklist until the MBR is established. Once the

15 MBR is established, fax the EHH Checklist into the

16 EF using NDRed. Use a Document Type of 'Other.'

17 The document description should show 'EHH

18 Checklist' and confirm that the EHH Checklist is

19 in the EF or electronic folder and legible, then

20 shred the original."

21 Q All right. To the best of your understanding and

22 based on your review of the factual information

23 and documents in this case, does this section of

24 the POMS describe what actually occurs with those

25 EHH forms?

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1 Q All right.

2 A Uh-huh.

3 Q So turning to page 4 of the POMS again, we see

4 this EHH checklist, and so in terms of the EHH

5 checklist then based on your review of the facts

6 in this case, if an EHH checklist does not

7 indicate that the patient has a diagnosis of an

8 asbestos-related condition, does that patient

9 become eligible for Medicare?

10 A Again, no, they would not. If we don't have a

11 diagnosis that is listed within the checklist or a

12 date of diagnosis and step 2, step 3, printed

13 name, physician signature and date is not

14 complete, we will deny the claim.

15 Q All right. In terms of the next program operation

16 manuals system or POMS, I would like you to turn

17 to what's marked as Exhibit 75. This is behind

18 tab 4 of your notebook.

19 A Okay.

20 Q Ms. Hillmann, do you have Exhibit 75 in front of

21 you?

22 A I do.

23 Q What is this?

24 A This is the background for EHH Medicare, so the

25 hospital insurance HI entitlement for individuals

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1 exposed to environmental health hazards, EHH.
2 Q Is this a document that you've seen before?
3 A Yes.
4 Q And in fact, is this a document that you reviewed
5 in preparation for your deposition today?
6 A Yes.
7 Q If you would leaf through it.
8 A Okay.
9 Q And tell me if this appears to be a true and
10 accurate copy of the POMS section for
11 HI 00803.001, hospital insurance entitlement for
12 individuals exposed to environmental health
13 hazards.
14 A Yes.
15 Q Okay. If we could just focus on Exhibit 75
16 generally, what is this and what is its
17 significance?
18 A This is just the background information on EHH
19 Medicare in general, just how it came about
20 underneath the Affordable Care Act, how we added
21 the section into the Social Security Act, and it
22 just goes over the basic requirements for
23 entitlement. It's not actually processing
24 instructions, but it's giving our technicians a
25 background on it.

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1 whether it was printed or through interviews of
2 living humans at SSA, does this section on the
3 background for EHH Medicare appear to be true and
4 accurate and to the best of your understanding
5 from what you learned from others during your
6 inquiry?
7 MR. KAKUK: Objection, scope.
8 A Yes.
9 Q Okay.
10 A To my knowledge.
11 Q All right. And does it appear to you that this
12 section, section 00803.001 states that in order to
13 receive EHH Medicare there must be certain
14 individuals exposed to environmental health
15 hazards and diagnosed with a medical condition
16 caused by such exposure?
17 MR. KAKUK: The same objection.
18 A Yes.
19 BY MR. DUERK:
20 Q Okay. Based on the language that we see here, is
21 there another section that we haven't read yet for
22 background for EHH Medicare?
23 A No.
24 Q Okay. I am looking at the next paragraph that
25 starts with "currently." Could you read that part

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1 Q If we could focus on section A and the citations
2 above it, if you would read the citations.
3 A Okay. Section 1881A of the Social Security Act.
4 Q And to the best of your knowledge, Ms. Hillmann,
5 is section 1881A of the Social Security Act
6 commonly referred to as the EHH provisions of the
7 Affordable Care Act?
8 A Yes.
9 Q Okay. If you could read section A, that would be
10 helpful.
11 A Okay. "Background for EHH Medicare.
12 Section 10323 of the Affordable Care Act added
13 section 1881A of the Social Security Act effective
14 March 23rd, 2010. This section extends
15 entitlement and medical hospital insurance (HI)
16 and eligibility to enroll in Supplemental Medical
17 Insurance or SMI to certain individuals exposed to
18 environmental health hazards (EHH) and diagnosed
19 with a medical condition caused by such exposure."
20 Q All right. I'll stop you right there.
21 A Okay.
22 Q In terms of providing background for EHH Medicare,
23 in terms of the information that you reviewed,
24 both in the POMS, in your interviews with other
25 SSA employees, in terms of all of the information

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1 as well, please.
2 A "Currently, the only individuals eligible for
3 Medicare under this provision are those who were
4 present in Lincoln County, Montana and have an
5 asbestos-related disease diagnosis. April 2010 is
6 the earliest possible effective date of
7 entitlement based on a March 2010 filing date."
8 Q All right. Now, in terms of these two POMS
9 sections, aside from these POMS sections are you
10 aware of any source of any other material that may
11 have been used to train, teach or instruct
12 individuals at the CARD clinic related to filling
13 out EHH forms?
14 A No.
15 Q Okay. And I want to make sure that I'm as
16 exhaustive as I can be here, and I don't mean to
17 beat a dead horse.
18 Did you look for any evidence that SSA had
19 provided training or instruction, direction or
20 supervision to the CARD clinic in terms of the
21 proper way to submit or fill out EHH forms other
22 than what we see here in the POMS?
23 A I did. I reached out to headquarters, I reached
24 out to the Kalispell manager and I reached out to
25 my former counterpart that used to head Medicare

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1 in my same position, she is now retired,
2 Kathy Suarez or Kathy Will, and I could not find
3 anything to that extent.
4 Q In terms of the way that you tried to turn up any
5 information along those lines, did you ask
6 questions about any type of training or any type
7 of education or any type of instruction that may
8 have occurred at any time in the history of SSA
9 working with CARD on the EHH program?
10 A I did.
11 Q Okay. And according to your search, is it fair to
12 say that the information you uncovered revealed no
13 training of CARD employees along these lines ever
14 existed?
15 A SSA employees have never trained CARD.
16 Q All right.
17 A Uh-huh.
18 Q So would it be fair to say that if there was any
19 claim that a training or an instruction by SSA in
20 Libby, Montana of CARD officials or CARD employees
21 in terms of filling out an EHH form, is it fair to
22 say that if anyone suggested that it had ever
23 occurred, you found no evidence or facts in your
24 search to support that?
25 A Correct.

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1 did you look for any correspondence from the CARD
2 clinic requesting training or asking about having
3 Social Security Administration field
4 representatives or staff from the Kalispell office
5 coming out to CARD and providing instruction or
6 training or guidance about any matter related to
7 EHH Medicare?
8 A I did not find any correspondence.
9 Q All right. In terms of these POMS sections, both
10 Exhibit 75 and Exhibit 76, do you see any language
11 in either of these program operational manual
12 system publications that say anything about a
13 B read only being a sufficient basis for EHH
14 Medicare?
15 A No.
16 Q In terms of any communication outside of these
17 POMS in terms of other POMS sections, the
18 emergency policy that you mentioned earlier or any
19 of the other information that you've referenced
20 here today that you accessed during your
21 preparation for this 30(b)(6) deposition, did you
22 see any other materials from the
23 Social Security Administration advising CARD that
24 a B read only would itself qualify an individual
25 for EHH Medicare benefits?

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1 Q Okay. Did you find any information about any SSA
2 individuals or employees ever visiting Libby,
3 Montana or the CARD clinic?
4 A No.
5 Q Okay. Did you find any information or any written
6 materials related to anybody from the
7 Social Security Administration ever providing CARD
8 with any awards?
9 A I did reach out to our headquarters components and
10 they tried to track down monetary funds as well as
11 the exemplary awards, and we couldn't find any
12 records of that, but our regional commissioner
13 did -- she did mention the possibility that there
14 was a regional-level award, but she has no record
15 of it.
16 Q Okay. Ms. Hillmann, I will represent to you that
17 I have seen a photograph of what appears to be
18 some sort of a plaque or a trophy of some kind
19 giving CARD some recognition for something.
20 Perhaps Mr. Bechtold may ask you some
21 questions about that, but have you seen any
22 correspondence, any information about any type of
23 award outside of this photograph of a trophy?
24 A No.
25 Q Okay. And in terms of any correspondence on file,

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1 A No.
2 Q In terms of the appropriate route for obtaining
3 Medicare benefits, outside of the EHH form, is
4 there any other avenue for a CARD patient or
5 anyone else to obtain EHH Medicare other than an
6 EHH form being submitted to the
7 Social Security Administration?
8 A No.
9 MR. KAKUK: Objection, scope.
10 A Sorry. No.
11 BY MR. DUERK:
12 Q Okay. Based on all of the facts that you
13 reviewed, based on all of your interviews in this
14 case, based on your review of information and
15 factual materials, did you see any correspondence
16 or any writings, e-mails of any kind from the SSA
17 saying that a B read by itself was sufficient to
18 trigger Medicare eligibility for a CARD patient?
19 A No.
20 Q In terms of the EHH form itself then, is the
21 submission of an EHH form that includes a
22 diagnosis of an asbestos-related disease or
23 condition the only avenue, route or mechanism that
24 you found through your factual inquiry of assuring
25 that a patient would be Medicare eligible under

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1 the EHH Medicare program?
2 A Yes.
3 Q So for example, are you familiar with what a
4 B read is?
5 A Absolutely not. That is outside the scope of my
6 job.
7 Q All right. Understood. Let me just describe it
8 for you this way generally.
9 A Okay.
10 Q I will represent to you that a B read is -- it can
11 be a report from a specialist radiologist who has
12 been certified by NIOSH to read either a chest
13 x-ray or in some circumstances a CT scan.
14 First of all, is that information that
15 you've ever heard before about B readers?
16 A Uh-uh. It's not within our listed policies, so I
17 wouldn't know and neither would our technicians.
18 Q All right.
19 A It's outside the scope of our job.
20 Q And in terms of whether or not it's relevant to
21 you within the scope of your job, do you
22 necessarily, not to put too fine a point on it,
23 but do you necessarily even care what a B reader
24 is?
25 A No.

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1 technicians don't get into B reads. We don't get
2 into all the medical issues with that. We follow
3 the checklist, and if everything is in the
4 checklist, we process our claims that way
5 following policy.
6 It's just like any other type of Medicare.
7 You have to have -- for international volunteers
8 or for a disability SUP, you have to have required
9 forms for each type of Medicare, and if you don't
10 have those required forms, then you are going to
11 be disallowed.
12 Q Understood.
13 A Yeah.
14 Q So in terms of the EHH checklist form, is it fair
15 to say that the technicians at SSA when it comes
16 to box number 2 about the diagnosis and how it was
17 arrived at, is it fair to say that SSA technicians
18 are relying on CARD to provide true and accurate
19 information on those forms based on the materials
20 you've reviewed?
21 A Correct.
22 Q Okay. And aside from the EHH form itself and,
23 again, I am sorry to be beating this to death, but
24 I just want to be really clear.
25 Aside from getting an EHH form from the

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1 Q Okay. So my question is this. Based on your
2 review of all of the factual information, did you
3 see any mechanism within the EHH Medicare program
4 for a CARD patient to receive Medicare benefits if
5 only a B reader's checklist or interpretive report
6 for a chest x-ray or CT were submitted to the
7 Kalispell field office?
8 MR. BECHTOLD: Foundation.
9 THE COURT REPORTER: Pardon?
10 MR. BECHTOLD: Foundation.
11 BY MR. DUERK:
12 Q I asked her if she ever saw any example of that
13 occurring in her factual investigation. Did you?
14 A No.
15 Q Okay. So Ms. Hillmann, I am asking basically a
16 logical question.
17 Based on your review of the facts in this
18 case, did you see any evidence that if a B read,
19 an interpretive form was sent to the Kalispell
20 field office, did you see any evidence of any CARD
21 patients that would receive Medicare eligibility
22 or Medicare benefits based on that B read alone?
23 A Okay. I guess I need you to repeat the question.
24 Q Sure.
25 A Because I think to be honest with you, our

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1 CARD clinic related to CARD patient Medicare
2 claims, is there any additional avenue, any
3 separate piece of paper, any work around, any
4 exceptional route to getting Medicare benefits for
5 a CARD patient that you came across during your
6 review of facts in this case other than an EHH
7 checklist?
8 A No.
9 Q Okay. It's 11:30. I would ask that we take a
10 short rest break.
11 THE VIDEOGRAPHER: The time is 11:26.
12 We are off the record.
13 (Break taken.)
14 THE VIDEOGRAPHER: The time is 11:34.
15 We are back on the record.
16 MR. KAKUK: Mr. Duerk, during the break
17 I believe Ms. Hillmann had something that she
18 wanted to clarify about people traveling to
19 Montana to conduct training. I believe the
20 question was limited to Libby, but in case it
21 wasn't, Ms. Hillmann, was there more information
22 you wanted to provide?
23 MR. DUERK: Why don't I ask a question
24 about that directly.
25 MR. KAKUK: Fair.

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1 BY MR. DUERK:
2 Q Ms. Hillmann, I was asking questions about
3 training in Libby. I may have failed to ask if
4 there was training generally in Montana.
5 Based on what Mr. Kakuk is presenting on
6 the record, is there anything that comes to mind
7 for you related to that topic?
8 A There was training for social security employees
9 from our regional office employees. Mary Lisa
10 Lewandowski, our regional commissioner. Our
11 current regional commissioner was there.
12 Nancy Berrihill, Kathy Will or Kathy Suarez,
13 Kelly Hansen and Chris DiGiacomo.
14 Q All right. And in terms of each of the
15 individuals that you just named, is it fair to say
16 that they are governments employees, not CARD
17 employees?
18 A Correct.
19 Q Okay. And so in terms of the trainings in Montana
20 likewise is it fair to say that the trainings
21 provided were trainings from government employees
22 to other government employees related to the EHH
23 Medicare program?
24 A Correct.
25 Q Okay. In terms of the documents that you've

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1 the information that you reviewed that would have
2 allowed CARD patients to receive Medicare
3 eligibility for life with only a B read?
4 A No.
5 Q Ms. Hillmann, I would like to cover the individual
6 topics that you were asked to address in the
7 subpoena which has been marked as Exhibit 135 for
8 purposes of this deposition. I will start with
9 paragraph 17 which is on page 11 of that subpoena.
10 Do you see that in front of you?
11 A Yes.
12 Q Okay. I will read the topic for you. Please tell
13 me if I have read it correctly.
14 "The Social Security Administration's
15 designated deponent must identify the SSA
16 employees who trained CARD staff to fill out the
17 environmental health hazards checklist in 2011."
18 Did I read paragraph 17 correctly?
19 A Yes.
20 Q Aside from the information that you have already
21 provided, is there any other information on
22 paragraph 17 that we haven't covered?
23 A No, just that we have never trained CARD staff on
24 the EHH checklist.
25 Q All right. Paragraph 18, I will read it. Please

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1 reviewed and the interviews that you have
2 conducted, were there any aspects or elements of
3 those trainings that were inconsistent with what
4 we have already reviewed in terms of the POMS
5 sections?
6 A No.
7 Q Okay. And during those trainings, based on the
8 information that you reviewed related to the
9 facts, was there any information that indicated
10 that that training of government employees
11 included any training that would allow for a CARD
12 patient to receive Medicare benefits without a
13 diagnosis of asbestos-related disease?
14 A Can you repeat the question?
15 Q Sure. I am trying to focus just on this training
16 among government employees in Montana.
17 A Okay.
18 Q Based on the factual inquiry that you made, did
19 you see any information that indicated to you that
20 those trainings included anything about allowing
21 patients from CARD who did not have a diagnosis of
22 asbestos-related disease to become Medicare
23 eligible?
24 A No.
25 Q Okay. And specifically did you see anything in

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1 tell me if I have read it correctly, and then I
2 will have a few follow-ups. Okay?
3 A Okay.
4 Q Paragraph 18. "The
5 Social Security Administration's designated
6 deponent must testify whether CARD staff have
7 filled out the environmental health hazards
8 checklists according to the training SSA provided
9 CARD staff in 2011 from 2011 until the present
10 day."
11 Did I read that correctly?
12 A Yes.
13 Q Aside from the testimony that you have already
14 provided, do you have any additional information
15 to share on that topic?
16 A No, just that we have never provided CARD staff
17 any type of training.
18 Q All right. Paragraph 19.
19 "When a physician at CARD determines a
20 patient has asbestosis by interpretation of a
21 computed tomographic radiograph of the chest, CARD
22 staff enter the patient's name, social security
23 number and date of birth in the step 1 section of
24 the environmental health hazards checklist. Check
25 the asbestosis box in the impairment section of

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step 2 of the environmental health hazards checklist, enter the date the CARD physician made the interpretation and the date of diagnosis section of step 2, enter the dates the patient was present in Lincoln County, Montana in step 3, and the CARD physician prints and signs the physician's name and dates the environmental health hazards checklist."

"The Social Security Administration's designated deponent must testify whether this is the SSA approved method of filling out the environmental health hazards checklist."

Aside from the testimony that you have already provided, do you have anything additional to add in response to paragraph 19?

A I do. A step 1 is completed by social security. We fill in the identifying information, and that's in HI 00803.50.

Q All right. And in terms of section 1, just for the jury's edification and reference, I am looking at Exhibit 76, page 4, at the EHH exemplar.

Step 1 is basically the first box on the EHH form on page 4, is that right?

A Correct.

Q Okay. Anything else to add in response to

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step 1, social security completes step 1 in that section of policy or on the EHH checklist.

And as far as step 2 and step 3, you know, our technicians are not going to know the background of a B reader. We are just assuming that the physician that completed section 2 and section 3 followed section 1881A of the act and we don't get into the medical interpretations or background of this checklist.

Q All right. Is it fair to say that you rely on CARD physicians to fill out boxes 2 and 3, sections 2 and 3 of the EHH form truly and accurately?

MR. KAKUK: Objection, scope.

A Yes.

BY MR. DUERK:

Q Okay. Paragraph 21.

"When a physician at CARD determines a patient has pleural thickening or pleural plaques by interpretation of a computed tomographic radiograph of the chest, CARD staff enter the patient's name, social security number and date of birth in the step 1 section of the environmental health hazards checklist, check the pleural thickening and pleural plaques box in the

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paragraph 19?

A No.

Q Okay. Paragraph 20.

"When a B reader qualified physician determines a patient has asbestosis by interpretation of plain chest x-ray or a computed tomographic radiograph of the chest, CARD staff enter the patient's name, social security number and date of birth in the step 1 section of the environmental health hazards checklist, check the asbestosis box in the impairment section of step 2 of the environmental health hazards checklist, enter the date the B reader physician made the interpretation in the date of diagnosis section of step 2, enter the dates the patient was present in Lincoln County, Montana in step 3, and the CARD physician prints and signs the CARD physician's name and dates the environmental health hazards checklist."

"The Social Security Administration's designated deponent must testify whether this is the SSA approved method of filling out the environmental health hazards checklist."

First, did I read that accurately?

A You did read it accurately, excuse me, but for

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impairment section of step 2 of the environmental health hazards checklist, enter the date the CARD physician made the interpretation in the date of diagnosis section of step 2, enter the dates the patient was present in Lincoln County, Montana in step 3, and the CARD physician prints and signs the physician's name and dates the environmental health hazards checklist."

"The Social Security Administration's designated deponent must testify whether this is the SSA approved method of filling out the environmental health hazard checklist."

Aside from the testimony that you have already provided, anything else that you feel is necessary to add in response to paragraph 21?

A Yes. Step 1 is completed by social security again. Anything within step 2 and step 3, the physician should be following section 1881A of the act. We do not step into that realm of pleural thickening or pleural plaques. That's outside the realm of our job.

Q Whose job is that?

A That is the physician.

Q All right. Not SSA's?

A Correct.

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1 Q Okay.

2 A We are not qualified to make those determinations.

3 Q All right. And in fact, when it comes to any

4 information on section 2 or section 3 of the EHH

5 form in Exhibit 76, page 4, does SSA based on your

6 review of all the facts in this case wade into any

7 of these boxes to double-check, second-guess or

8 overread what the physicians have placed here from

9 the CARD clinic related to their patients?

10 A No.

11 Q Let's see. I believe I was on paragraph 22. I

12 will read it, and please tell me if I have read it

13 correctly.

14 "When a B reader qualified physician

15 determines a patient has pleural thickening or

16 pleural plaques by interpretation of plain chest

17 x-ray or a computed tomographic radiograph of the

18 chest, CARD staff enter the patient's name,

19 social security number and date of birth in the

20 step 1 section."

21 I am going to try to speed this up, because

22 I think the beginning of all of these is

23 essentially the same.

24 A Okay.

25 Q Okay. At the bottom it says again, "The Social

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1 the physician, the physician's signature and the

2 date. Outside of that, that's outside of the

3 scope of our job.

4 Q All right. And I don't want to summarize

5 everything inaccurately, but I am going to attempt

6 to, and then tell me if I have done it unfairly.

7 It sounds to me like in terms of this EHH

8 form, what the SSA field techs are looking for is

9 whether there is a diagnosis of an

10 asbestos-related condition, is that fair?

11 A Correct.

12 Q Okay. And if there is not an asbestos-related

13 condition or an asbestos-related disease, is it

14 also fair to say based on your review of the facts

15 that that patient isn't eligible for Medicare?

16 A Correct.

17 Q Okay. But if the CARD physician has indicated in

18 section 2 of this form that there is a diagnosis

19 of an asbestos-related condition caused by

20 exposure to Libby asbestos, then the patient is

21 eligible for Medicare based on the information

22 you've reviewed, is that fair?

23 A Correct.

24 Q Okay. What if the information that's included in

25 section 2 is false?

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1 Security Administration's designated deponent must

2 testify whether this is the SSA approved method of

3 filling out the environmental health hazards

4 checklist."

5 Based on your view of paragraph 22 and in

6 light of the testimony you have provided already

7 today, is there any other response that you need

8 to give?

9 A Again, step 1 is completed by social security.

10 Step 2 and step 3 should be followed by the

11 physician following section 1881A of the act.

12 Social security employees do not get involved with

13 step 2 and step 3.

14 Q All right. So looking at the EHH form itself

15 then, Exhibit 76, page 4, when it comes to making

16 any notes or any observations or any distinctions

17 in section 2 of the EHH form under the heading of

18 the column minimum medical evidence required, what

19 do SSA field staff do when looking at this form

20 based on the factual information you reviewed,

21 anything?

22 A They just check to make sure that the individual

23 has a diagnosis that is listed within the EHH

24 checklist, that there is a date of diagnosis,

25 step 3 is completed, there is the printed name of

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1 For example, what if a patient's EHH form

2 was filled out completely perfectly and

3 completely, there was a first name, a middle

4 initial, a last name, a social security number and

5 a date of birth filled out by SSA, and then step 2

6 was also completed by the provider with

7 information indicating that a patient had an

8 asbestos-related disease diagnosis.

9 Are you with me so far?

10 A Uh-huh.

11 Q All right. Let's also in this hypothetical look

12 at step 3, and is step 3 a section that is also

13 filled out by CARD?

14 A Correct.

15 Q Okay. And then the bottom of section 3 below

16 whether the individual is present in Lincoln

17 County, Montana during the relevant time period,

18 there is the section for both the printed name of

19 the physician and the CARD physician's signature

20 and a date for that signature, right?

21 A Uh-huh.

22 Q Okay. Is that a yes?

23 A Yes.

24 Q All right. So in this hypothetical, all of the

25 information appears to indicate a diagnosis of an

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asbestos-related condition with a date of diagnosis, the presence in Lincoln County, Montana section appears to have been met based on the information that is there, and there is a doctor's printed name from CARD, a physician's signature and a date.

Are you with me?

Yes.

Okay. Let's say in this hypothetical the impairment, the box that's checked next to the diagnosed impairment is asbestosis.

Okay.

Okay. Let's also say that asbestosis has a diagnosis code of 5010, is that right?

Uh-huh.

Is that a yes?

Yes, that is correct.

And that the date of diagnosis is filled out with a handwritten or typed date section.

Uh-huh.

In terms of that information, if SSA through any means became aware that in fact there was not a diagnosis of asbestos-related disease or that there was not a date of diagnosis of asbestos-related disease or that the impairment

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I didn't directly. This e-mail was sent to Terra Whiteman, the Kalispell manager.

Okay. And so the e-mail, I think it --

And this was our first time hearing of it, because I have searched all the records all the way back to 2010, so this is the first time ever seeing anything like this come from CARD.

All right. There's a good starting place. I'm going to have some more questions about this e-mail in a minute, but let's stick with the hypothetical.

Okay.

So it sounds like this hypothetical has happened. You have learned information that an EHH form completed by CARD was completed inaccurately in some way, is that fair?

Uh-huh.

Is that a yes?

That's a yes.

Okay. And once you learned that that EHH form was filled out inaccurately, what did you do?

What did the Social Security Administration do based on your review of the facts?

They contacted me, and I instructed them to deny the claim.

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that had been marked was in fact untrue or incorrect, would that patient be Medicare eligible based on all of the information, the facts and the conversations that you had in preparation for your deposition today?

MR. KAKUK: Objection, scope. Go ahead.

No.

BY MR. DUERK:

Okay.

And I do want to expand on this a little bit.

Sure.

I just recently received some e-mails from CARD March 21st, 2023 where I believe it was --

Wait. I'm sorry. When?

March 21st, 2023.

So this would have been -- today's date is May 16th, so you received these less than a month ago?

That they had filled out two checklists for two beneficiaries that they didn't feel were diagnosed, and I instructed the Kalispell office to follow the EM 10042REV and deny the claims.

Wait. I'm sorry. So you learned from CARD --

Just recently in March.

That two patients --

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All right. In those two cases did those individuals have a diagnosis of an asbestos-related disease?

I wouldn't be able -- they stated that they didn't find that these were diagnosed with an asbestos-related disease, but they had completed the form.

CARD said these cases --

Correct.

And this happened just recently in March?

21st, 2023.

And SSA's response was to deny the claim?

Absolutely.

You seem confident about that. Why was it absolutely SSA's response to deny the claim?

Because you can't complete an EHH checklist and state that somebody -- marking a person diagnosed with one of these diseases, but stating that you don't feel they are diagnosed with that disease.

As a qualified physician, you are signing off stating that you feel that they have this certain diagnosis, and you put the date of diagnosis and you completed this form following section 1881A of the act.

And SSA is relying on CARD to be true and accurate

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1 in these EHH forms?

2 A Correct.

3 Q And so in this particular instance, somebody at

4 CARD indicated that the EHH form was for patients

5 that didn't have a diagnosis?

6 A Correct.

7 Q And SSA's concern or your concern was that the EHH

8 form that had been submitted was not accurate?

9 A Correct.

10 Q And so as a result what was the conclusion, what

11 happened?

12 A We denied the claims.

13 Q All right. Is that action consistent with what

14 should occur with EHH Medicare claims that are

15 submitted when the information on them turns out

16 not to be true about a diagnosis?

17 MR. KAKUK: Objection, scope.

18 A Correct.

19 BY MR. DUERK:

20 Q Okay. And why do you say that?

21 A Because that would be fraudulently filling out one

22 of these forms. If you bring it to our attention

23 that you filled out a form like this, this EHH

24 checklist, and that you are marking that this

25 person is diagnosed with this impairment, with

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1 Q I'd like to take a short break and obtain a copy

2 of that e-mail.

3 A Okay.

4 THE VIDEOGRAPHER: The time is 11:58 and

5 we are off the record.

6 (Break taken.)

7 THE VIDEOGRAPHER: The time is 12:00.

8 We are back on the record.

9 BY MR. DUERK:

10 Q All right. Ms. Hillmann, I have a few more

11 questions for you about this e-mail from the

12 March 21st, 2023 timeframe.

13 In terms of any communication around this

14 issue, and by "issue" I mean CARD submitting EHH

15 records with information that was not true on it

16 related to a diagnosis of asbestos-related

17 disease, are there any communications about this

18 topic around this timeframe that you saw from the

19 CARD clinic in your search for information?

20 A No. The only -- this is the first piece of

21 communication from CARD that covered that piece of

22 material that you were just talking about.

23 Q Okay.

24 A Uh-huh.

25 Q In terms of communication from CARD, is the e-mail

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1 this date of diagnosis that you're signing off on

2 it and you're stating that you don't feel that

3 they're diagnosed with this condition, that to us

4 is fraud.

5 Q In terms of this March 21st, 2023 e-mail, aside

6 from this e-mail, based on your review of the

7 facts, your interviews, your factual inquiry in

8 this case, have you seen any other correspondence

9 from CARD that alerted SSA that it was adopting

10 this same practice with EHH Medicare claim forms?

11 A No. This is the first e-mail that I have seen.

12 And as I mentioned, I went all the way back

13 looking through lots of documents and talking to

14 the Kalispell manager, talking to headquarter

15 components, looking through the Medicare lead's

16 previous information on EHH claims.

17 Q And do you recall who at CARD sent this

18 March 21st, 2023 e-mail?

19 A It was a technician under the director.

20 Q A technician under the director? And do you

21 recall from -- do you know who the director at

22 CARD was? Were they listed on this e-mail?

23 A No, they were not listed on that e-mail.

24 Q Do you have a copy of this e-mail?

25 A I'm sure I do.

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1 from March 21st, 2023, did it include

2 communication directly from CARD?

3 A Yes.

4 Q Okay. All right. So here's the situation that

5 I'm in, and perhaps you can answer some of these

6 questions and help out.

7 I will represent to you that I have

8 requested any correspondence about any

9 communication related to a B read only program or

10 CARD patients who haven't been diagnosed with

11 asbestos-related disease, but submitted for

12 Medicare, and I have been asking for that kind of

13 communication for years from CARD or its

14 individual members or any other sources, and I

15 have not received anything along those lines, and

16 I understand that we are talking about March 21st,

17 less than a month ago here.

18 In terms of this topic, was it your intent

19 to try to look for any type of correspondence or

20 communication about this topic that came to SSA

21 from the CARD clinic?

22 A I looked for everything within the subpoena

23 document.

24 Q All right.

25 A Yeah.

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1 Q And this one e-mail from March 21st, 2023 was the
2 only document you received?
3 A Correct. And this solely just covered the
4 diagnosis.
5 Q All right. Were there any other pieces of
6 correspondence from the CARD clinic that have been
7 forwarded to the SSA recently that you reviewed in
8 preparation for your deposition today?
9 A I believe this correspondence was the only
10 continuing correspondence that I had with
11 Kalispell Montana's district manager.
12 Q Okay.
13 A To my recollection.
14 Q Okay.
15 MR. KAKUK: Can we go off the record for
16 a second?
17 MR. DUERK: Yes.
18 THE VIDEOGRAPHER: The time is 12:03.
19 We are off the record.
20 (Break taken.)
21 THE VIDEOGRAPHER: The time is 1:25. We
22 are back on the record.
23 BY MR. DUERK:
24 Q Ms. Hillmann, we have come back from a little bit
25 of a break, and during that break I will represent

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1 BY MR. DUERK:
2 Q All right. Let's begin with Exhibit 138, and I
3 apologize if I'm a little slow with this. I am
4 just getting used to this e-mail myself. It
5 appears that the e-mail train begins on page 2 of
6 Exhibit 138.
7 Do you see that in front of you?
8 A Yes.
9 Q If you could describe generally what this e-mail
10 string is about to the best of your knowledge.
11 A To the best of my knowledge, what it's conveying
12 is that Stephanie Shaw had some questions for our
13 district manager, Terra Whiteman. Stephanie is
14 from CARD, and Terra was trying to set up a
15 possible time to speak.
16 Q And what was the nature of the topic that CARD
17 wanted to discuss with Terra Whiteman from SSA?
18 A It sounded like they wanted to discuss the EHH
19 checklist in general and, you know, one of Terra's
20 comments was that she relayed the information that
21 Stephanie had conveyed to her to the regional
22 office and "because you are telling me that CARD
23 does not consider the individual diagnosed based
24 on an interpretation by a B reader, we are unable
25 to approve an EHH Medicare claim involving the

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1 that we now have in front of us a handful of
2 e-mails that I will represent to you I have not
3 seen before today.
4 Do you have two e-mail strings in front of
5 you with the lead pages sent Tuesday, April 11th,
6 2023 and Friday, April 28th, 2023? I tell you
7 what, why don't I give you the stapled copies.
8 A Yeah.
9 Q All right.
10 A Yes.
11 Q And what are these?
12 A These are e-mail correspondence between
13 Stephanie Shaw and Terra Whiteman. Terra Whiteman
14 is the district manager of Kalispell, and then
15 Stephanie Shaw appears to be from CARD.
16 Q Okay. And I will represent to you that the way
17 that we came into possession of these e-mails is
18 that after you provided some testimony about
19 e-mails from March 21st, 2023 timeframe, CARD's
20 attorney produced these e-mails for us.
21 In terms of these e-mails, I am going to
22 start with the April 11th e-mail which I would ask
23 the court reporter to mark as Exhibit 138.
24 (WHEREUPON, Deposition Exhibit 138
25 marked for identification by the reporter.)

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1 B reader at this time. Someone from our agency or
2 Medicare will be reaching out directly in the next
3 couple of weeks."
4 Q So Ms. Hillmann, does this e-mail address the
5 topic that we were discussing prior to the break
6 about a revelation that certain EHH forms
7 submitted to SSA had untrue or incorrect
8 information on them?
9 A Yes.
10 Q Okay. And according to this general timeframe,
11 April 6th, 2023, based on your review of written
12 materials and interviews that you took, based on
13 your factual inquiry, is this roughly the very
14 first time that SSA is learning that some of the
15 EHH forms submitted to its field office have
16 untrue information on them?
17 A Correct.
18 Q Okay. And what was SSA's response, if you can
19 recall?
20 A Well, when Terra actually reached out to me, she
21 explained this to me in a way that they were
22 completing the EHH checklist with a diagnosis as
23 defined under section 1881A, but they truly didn't
24 feel that that individual was diagnosed, that
25 physician that signed the form. And I explained

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1 to her if they're stating that about a specific
 2 beneficiary, then we have to deny the claim based
 3 on policy.
 4 Q Okay. And this is information related to a
 5 conversation between you and Terra or you and
 6 CARD? I'm sorry, if you could clarify.
 7 A So Stephanie Shaw who reached out to Terra and
 8 they eventually talked by phone had this
 9 conversation, so Stephanie Shaw is from CARD, and
 10 she was explaining this to Terra who is our
 11 district manager in Kalispell, Montana.
 12 And then Terra told her that she needed to
 13 talk to the regional office Medicare expert, which
 14 I am, and then I explained how the policy reads
 15 and how we would have to deny the claims, and that
 16 was our official response.
 17 Q Had this type of issue from CARD ever been
 18 elevated to you before?
 19 A No. This is the first time I'm seeing anything
 20 like this.
 21 Q In 2023?
 22 A Exactly.
 23 Q Did it cause any surprise?
 24 A It did, but, you know, by that time I think we
 25 were aware of the subpoena, so it was just kind

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1 A Correct.
 2 Q In terms of you spoke a moment ago about I think a
 3 conversation between or among CARD staff and SSA
 4 in which there was some claim that the CARD
 5 employees felt that a patient wasn't diagnosed.
 6 Did I hear that correctly?
 7 A Correct.
 8 Q Okay. And if you could share with me any factual
 9 information you're aware of on that basis, what
 10 was CARD essentially sharing with SSA about this
 11 category of patients?
 12 A Well, as I was previously mentioning, they just
 13 basically said that they completed the checklist,
 14 but they didn't feel that person was diagnosed
 15 with that actual EHH diagnosis, the physician that
 16 signed the form, and with that statement I told
 17 and I instructed the Kalispell manager that we
 18 cannot approve that claim.
 19 Q Okay. I want to be very clear about what specific
 20 information may have been shared with SSA during
 21 that timeframe outside of a feeling that perhaps
 22 this patient didn't have a diagnosis according to
 23 CARD employees. Okay?
 24 A Uh-huh.
 25 Q Ms. Hillmann, at any time did CARD disclose to you

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1 of, you know, I just assumed maybe this was tied
 2 up with whatever was going on with the subpoena.
 3 Q Okay. And in terms of the subpoena, are we
 4 talking about the subpoena for your deposition
 5 testimony?
 6 A Absolutely.
 7 Q Today?
 8 A Yes.
 9 Q Okay. So prior to this timeframe, and I am
 10 including today in this timeframe because,
 11 frankly, we are at May 16th and these e-mails are
 12 dated in April, this is the first you've heard
 13 about EHH forms that have incorrect information?
 14 A Absolutely.
 15 Q Okay.
 16 A And in my position I have been doing this since
 17 2018, and prior to that I looked through all of
 18 Kathy's stuff, and I haven't seen any kind of
 19 correspondence like this.
 20 Q So no correspondence that you're aware of --
 21 A Correct.
 22 Q -- through your inquiry had elevated this issue to
 23 your awareness related to EHH forms submitted to
 24 the Social Security Administration field office
 25 with untrue information on it?

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1 or anyone else at SSA as far as you were aware
 2 that CARD was knowingly submitting EHH forms in
 3 support of Medicare beneficiary status for
 4 patients who did not have a diagnosis of
 5 asbestos-related disease prior to April of 2023?
 6 A No.
 7 Q Did CARD ever submit any correspondence authored
 8 by CARD to the effect that CARD was knowingly
 9 submitting patients for Medicare benefits who CARD
 10 knew did not have a diagnosis of asbestos-related
 11 disease?
 12 A Prior to that date?
 13 Q Prior to this timeframe in 2023.
 14 A No.
 15 Q For example, I would like you to turn to
 16 Exhibit 7, I'm sorry, tab 7 in your book.
 17 A Okay.
 18 Q Do you see Exhibit 123 in front of you?
 19 A Yes.
 20 Q Now, what is the date at the top of this page?
 21 A May 18, 2015.
 22 Q Okay. And do you see CARD's letterhead?
 23 A I do.
 24 Q Now, I would like to ask some questions about
 25 this. I believe this will already have been

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1 admitted into evidence. Ms. Hillmann, if you
 2 would read the first paragraph here.
 3 A Okay. "You participated in an asbestos health
 4 screening on 12-11-2014, and at that time you were
 5 not diagnosed with an asbestos-related disease
 6 (ARD). You received a letter at the conclusion of
 7 your appointment that informed you that your chest
 8 x-ray and CT would be sent out for a second read
 9 by other doctors specially trained in reading
 10 radiographic images for dust diseases like
 11 asbestos."
 12 Q Okay. If you would continue reading the second
 13 paragraph.
 14 A Okay. "One of these doctors did identify a small
 15 abnormality on the CT image. It is nothing that
 16 has significant health implications, nor is it
 17 considered a diagnosis of an asbestos-related
 18 disease."
 19 Q All right. If you'd read the next paragraph.
 20 A "A diagnosis of asbestos-related disease is based
 21 on exposure histories, time since exposure,
 22 medical provider assessment and radiographic
 23 images. The reader who identified the abnormality
 24 did not have the rest of this information."
 25 Q The next paragraph, please.

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1 patients?
 2 A No.
 3 Q What does this letter indicate to you about the
 4 individual patient here in terms of whether or not
 5 they have a diagnosis of asbestos-related disease?
 6 MR. KAKUK: Objection, scope.
 7 MR. BECHTOLD: Foundation.
 8 BY MR. DUERK:
 9 Q Let me put it this way.
 10 If you were to see correspondence from CARD
 11 indicating that they were telling patients that
 12 that patient was eligible for social security EHH
 13 Medicare benefits even though that patient did not
 14 have a diagnosis of asbestos-related disease,
 15 would you find that troublesome?
 16 A Yes.
 17 Q Why?
 18 A Because that would be a denial. We shouldn't be
 19 putting individuals on EHH Medicare that don't
 20 have the proper diagnosis under section 1881A of
 21 the act.
 22 Q Based on all of the information that you uncovered
 23 during the course of your inquiry, did you ever
 24 see any correspondence from CARD or any e-mails,
 25 any other documentation prior to this timeframe

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1 A "We are notifying you of the finding because any
 2 type of abnormality identified by the outside
 3 reader, even if it not a diagnosis of an
 4 asbestos-related disease, qualifies you for
 5 certain medical benefits."
 6 "You are now eligible for Medicare benefits
 7 regardless of your age based on these findings.
 8 If you choose to enroll in Medicare, you would
 9 also be eligible for the Medicare Pilot Program
 10 for ARD that covers medically necessary services
 11 not covered by usual medical insurance programs.
 12 An example would be mileage, fitness club
 13 memberships, assistance with daily living.
 14 Information about these programs is enclosed."
 15 Q The next paragraph.
 16 A "In addition, you can continue to be eligible for
 17 free ongoing screenings for asbestos-related
 18 disease through the CARD screening program."
 19 Q Ms. Hillmann, have you ever seen a letter like
 20 this?
 21 A No.
 22 Q From CARD in any respect?
 23 A No.
 24 Q Has CARD ever sent to you any correspondence
 25 remotely similar to this about any of their

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1 disclosing that CARD was telling patients that
 2 they were eligible for Medicare without a
 3 diagnosis of asbestos-related disease?
 4 A No.
 5 Q Would you or anyone else at the
 6 Social Security Administration based on your
 7 factual inquiry have ever written a letter like
 8 this to CARD teaching them, training them,
 9 instructing them that this practice of submitting
 10 patients for Medicare benefits without a diagnosis
 11 of ARD was appropriate, proper or authorized by
 12 the Social Security Administration?
 13 A No.
 14 Q Why not?
 15 A Because that's outside of the scope of our job.
 16 Q If we could turn to what I would like to mark as
 17 Exhibit 139, the e-mail dated at the top Friday,
 18 April 28th, 2023, that would be helpful.
 19 (WHEREUPON, Deposition Exhibit 139
 20 marked for identification by the reporter.)
 21 BY MR. DUERK:
 22 Q Ms. Hillmann, is Exhibit 139 an e-mail train that
 23 you have seen before today?
 24 A Yes.
 25 Q And is Exhibit 139 and the e-mail train here from

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1 approximately the end of April 2023 and earlier
 2 part of the same conversation that is related to
 3 this March 21st, 2023 timeframe?
 4 A Correct.
 5 Q Okay. And that timeframe, I will just represent
 6 to you, is it fair to say this timeframe is the
 7 first information you had heard of from CARD that
 8 they were submitting people to Medicare or SSA for
 9 Medicare benefits under the EHH program without a
 10 diagnosis?
 11 A Yes.
 12 Q I would like to focus on the e-mail in the
 13 beginning of this train, so page 3 of Exhibit 139,
 14 an e-mail from Tracy McNew dated April 12th, 2023.
 15 First off, who is Tracy McNew?
 16 A She is the executive director of the CARD clinic.
 17 Q And who is Terra Whiteman again?
 18 A Terra Whiteman is the Kalispell district manager.
 19 Q Okay. And what is your understanding of how this
 20 e-mail originated, if you know?
 21 A I believe this particular e-mail actually
 22 originated from this Exhibit 138.
 23 Q Okay. So the two Exhibits 138 and 139 are tied
 24 together, is that fair?
 25 A Yeah.

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1 because you're telling me that CARD does not
 2 consider the individual diagnosed based on
 3 interpretation by a B reader, we are unable to
 4 approve EHH Medicare claims involving a B reader
 5 at this time, but this was a phone conversation
 6 where they basically laid out that the physician
 7 was completing the EHH checklist, but did not feel
 8 that that person was diagnosed, so I think there
 9 was some misinterpretation here from the
 10 phone call with Terra to Stephanie to what was
 11 relayed to Tracy.
 12 Q All right. So in any event, in terms of this
 13 e-mail on Exhibit 139, page 3, is this the first
 14 that SSA is learning based on your factual
 15 investigation of the matter that CARD is
 16 apparently submitting EHH checklists based on
 17 positive B reads alone?
 18 A This is the first time that I'm hearing about it
 19 from the original time that Terra contacted me.
 20 Q And the original time that Terra contacted you
 21 again was April of 2023?
 22 A Correct.
 23 Q And prior to that time were you aware of any
 24 correspondence, any communication of any kind from
 25 CARD in any way in which CARD had disclosed to the

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1 Q Okay. If you would please read this e-mail from
 2 Tracy McNew to Terra Whiteman on April 12th that
 3 would be helpful.
 4 A Okay. "Hi Terra. My name is Tracy McNew. I am
 5 the executive director of the CARD clinic. Thanks
 6 for your e-mail to Stephanie Shaw about EHH
 7 checklists indicating that SSA will no longer be
 8 approving Medicare based on positive reads by
 9 B readers."
 10 Q If I could stop you right there, first of all, is
 11 it true that SSA would no longer be approving
 12 Medicare based on positive reads by B readers,
 13 that is to say are you aware that prior to this
 14 time or are you aware of whether or not SSA ever
 15 had a practice of approving Medicare benefits
 16 based only on positive B reads?
 17 MR. KAKUK: Objection, scope. Go ahead.
 18 A Again, that's outside of the scope of the realm of
 19 my job. Honestly, I think this e-mail transpired
 20 from a misinterpretation of what Terra was trying
 21 to convey to Tracy's employee at CARD.
 22 Q If you could explain, that would be helpful.
 23 A Yeah. So Terra came back, and I believe it was in
 24 this e-mail, and she just explained to them that
 25 she conferred with the regional office, and

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1 SSA that they were engaging in this practice of
 2 submitting CARD patients for Medicare benefits on
 3 a B read alone prior to this period?
 4 A No.
 5 Q Okay. It sounds to me from the second sentence of
 6 this e-mail, April 12th, 2023, Exhibit 139, that
 7 Tracy McNew is saying that SSA will no longer be
 8 approving Medicare based on positive reads by
 9 B reads.
 10 Do you see that sentence?
 11 A I do see that sentence, yes.
 12 Q Okay. And just so that we are clear, have you
 13 seen any materials anywhere ever from CARD that
 14 indicate that this was an approved practice by the
 15 Social Security Administration?
 16 A No.
 17 Q And you seem certain of that. Why?
 18 A Just because I -- I mean, we don't, again, we
 19 don't go outside the realm of that EHH checklist.
 20 We don't get into the B reader part of this or
 21 anything that has to do with the medical
 22 interpretations or anything to do with that. We
 23 are not medical experts.
 24 So the conversation between Terra and
 25 Stephanie seems to be misconstrued here within

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1 this e-mail. Terra was trying to convey that this
2 employee said that this physician completed the
3 EHH checklist even though they did not agree with
4 the diagnosis, and that to us is a denial for EHH
5 Medicare.
6 Q And is that because that individual patient does
7 not have a diagnosis of asbestos-related disease?
8 A Correct.
9 Q Okay. Further down in this e-mail of April 12th,
10 2023 there is another sentence that I would just
11 like to read to you, and please tell me if I have
12 read it correctly. Okay?
13 A Uh-huh.
14 Q That sentence begins about midway down this
15 e-mail.
16 It says, "Just to be clear, SSA has now
17 changed its position regarding Medicare
18 eligibility based on positive B reads, and CARD
19 should no longer fill out EHH forms for patients
20 with no CARD diagnosis even if they have a
21 positive outside B read or CT read."
22 Is that correct? Did I read that
23 accurately?
24 A You did.
25 Q Okay. So now I just want to be clear.

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1 so they can address any of your concerns. I will
2 have them reach out to you directly. Thank you."
3 Q So is this the e-mail that clarifies that there
4 has been no change in SSA policy?
5 A Yes.
6 Q Okay. When were you asked to look at these
7 e-mails?
8 A I believe sometime in April. I think that was
9 whenever Terra connected with Stephanie and
10 Stephanie had that question.
11 Q And at any time prior to you looking at these
12 e-mails had anyone from CARD to the best of your
13 knowledge approached anyone at the
14 Social Security Administration outside of what we
15 are seeing here to ask questions about a practice
16 of submitting B read only patients for Medicare
17 benefits to SSA?
18 A I mean, I can't really speak on that. I know
19 there was continuing correspondence with Terra and
20 then I believe the executive director and
21 Stephanie, but I don't know if it was directly
22 related to that.
23 Q At any point, and I think we have covered this,
24 but at any point to the best of your knowledge
25 according to your factual inquiry did the

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1 Was there any change in SSA's position
2 regarding Medicare eligibility based on positive B
3 reads that you could find in any of your factual
4 inquiry?
5 MR. KAKUK: Objection, scope. Go for
6 it.
7 A No, and I think Terra cleared that up in her
8 e-mail that's dated April 26th, 2023.
9 Q Let's turn to that e-mail.
10 A Okay.
11 Q Are you looking at page 1 of Exhibit 139?
12 A I believe it's page 2, correct? Yeah, page 2.
13 Q Page 2? Okay. I am looking at an e-mail sent
14 Wednesday, April 26th, 2023 at 2:47 PM.
15 Am I looking at the right one?
16 A Correct.
17 Q Okay. If you would please read it.
18 A "Good afternoon, Tracy. I wanted to get you an
19 interim answer to this e-mail. I think there may
20 be confusion. Stephanie reached out to SSA and
21 made us aware that CARD does not consider the
22 patients as diagnosed despite signing off on the
23 checklist when a B reader is involved. SSA has
24 not changed any of its rules. I am forwarding
25 your information to our center for program support

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1 Social Security Administration ever train or teach
2 or authorize this practice with CARD from 2010 at
3 any time?
4 A No.
5 Q The way that we got into this line of questioning
6 initially during your deposition today, I want to
7 try to return to that point. If I remember
8 correctly, we were walking through the different
9 paragraphs that you were asked to respond to in
10 the subpoena.
11 Do you recall that part of your testimony?
12 A Yes.
13 Q Okay. I would like to return to that part of the
14 inquiry, but before we leave off here, when this
15 topic first came up, you used the word "fraud."
16 Do you recall that?
17 A Yes.
18 Q What was your meaning?
19 What were you describing when you used that
20 word?
21 A Fraud means you are completing a form like to me
22 it would be illegally, and you're signing off on a
23 diagnosis that you don't believe this person is
24 diagnosed so they can get onto Medicare benefits,
25 so that to me is a clear indication of fraud.

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1 Q And when you reviewed this e-mail train in
2 Exhibits 138 and 139 about CARD's practices of
3 submitting patients without a diagnosis for
4 Medicare benefits, did you have concerns that this
5 was fraudulent?
6 MR. KAKUK: Objection, scope.
7 A I did have concerns, but now that it was on our
8 radar, we did make it clear to them that if they
9 were completing any checklists that they didn't
10 agree that person had a diagnosis that we would be
11 denying them and that they need to make us aware
12 of that.
13 Q And when you asked for CARD to make you aware of
14 any of those cases, did CARD disclose to you how
15 many cases they have done this in, for how many
16 individual CARD patients?
17 A I didn't directly talk to CARD, but Terra relayed
18 that information, and to my knowledge there was no
19 such reply.
20 Q Okay. So to the best of your knowledge based on
21 your factual inquiry as you sit here today as far
22 as you are aware there are two patients whose EHH
23 forms were submitted when CARD knew that patient
24 did not have an ARD diagnosis?
25 A Correct.

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1 employees or technicians do not get into the
2 specifics of the medical condition listed on the
3 EHH checklist.
4 Q In terms of paragraph 22, when a B reader
5 qualified physician determines a patient has
6 pleural thickening or pleural plaques by
7 interpretation of plain chest x-ray or computed
8 tomographic radiograph of the chest, SSA staff
9 doesn't wade into those facts to determine whether
10 or not what SSA is being told by CARD qualifies as
11 a diagnosis or not.
12 That's left up to the CARD physician to
13 state on the EHH form, is that fair?
14 A Correct.
15 Q Okay. Turning to paragraph 25, I will read it and
16 please tell me if I have read it correctly.
17 "The Social Security Administration's
18 designated deponent must testify why the
19 Social Security Administration gave an award to
20 CARD for CARD's exemplary cooperation with the
21 Social Security Administration in implementing the
22 amendments enacted by the Affordable Care Act."
23 I think we have heard some of your
24 testimony here. Do you have anything more to
25 offer on that topic?

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1 Q Okay. And you are aware of no more than just
2 those two patients from the spring of 2023?
3 A Correct.
4 Q At any time has CARD disclosed to you how many
5 patients actually fell into this category or fall
6 into this category?
7 A I've had no direct correspondence with CARD and I
8 don't believe that to my knowledge, and I have
9 asked Terra, that they have reported anybody
10 outside of those two beneficiaries.
11 Q Those two beneficiaries from the spring of 2023?
12 A Correct.
13 Q Okay. Back to the subpoena, again, I am looking
14 at what has been marked as Exhibit 135. I think
15 we made it to paragraph 22.
16 A Okay.
17 Q And just so that I'm clear, once you've had a
18 chance to review paragraph 22, is there anything
19 else that comes to mind that you have to offer in
20 response to paragraph 22 that we haven't talked
21 about today?
22 A So on paragraph 22, again, step 1 is completed by
23 social security, and then CARD is to complete
24 step 2 and step 3 following section 1881A of the
25 act. As far as the specifics, social security

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1 A I do not.
2 Q Okay. So to the best of your knowledge based on
3 your factual inquiry, did you see evidence that
4 the Social Security Administration gave an award
5 to CARD for CARD's exemplary cooperation with the
6 SSA in implementing the amendments enacted by the
7 Affordable Care Act?
8 A I did not, but as I previously mentioned, there
9 could have been a regional award. Our Regional
10 Commissioner Mary Lisa Lewandowski did mention
11 that there was a potential that a regional
12 commissioner award was given out.
13 Q Okay.
14 A But she had no record of it.
15 Q All right. And you communicated with
16 Mary Lewandowski about that?
17 A Correct.
18 Q Okay. Paragraph 26.
19 "The Social Security Administration's
20 designated deponent must testify why the
21 Social Security Administration has designated to
22 CARD the task of filling out environmental health
23 hazards checklists."
24 What response do you have?
25 A Well, I think that, you know, again, this aligns

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1 with section 1881A of the act. The physicians are
2 completing these checklists and, you know,
3 following the guidelines of that act in order for
4 these beneficiaries to be put on EHH Medicare. If
5 they're not diagnosed with one of those
6 conditions, then they will not be put on EHH
7 Medicare.
8 Q And in terms of a physician's determination,
9 again, with the diagnosis, it's the physician at
10 CARD who fills out the EHH form, is that right?
11 A Correct.
12 Q And is SSA relying on the provider or the CARD
13 physician to communicate whether there is a
14 diagnosis of asbestos-related disease or not to
15 SSA?
16 A Correct.
17 MR. KAKUK: Objection, scope.
18 A Sorry. Correct.
19 Q Anything else to offer on paragraph 26 aside from
20 what's already been covered?
21 A No.
22 Q Okay. Paragraph 27.
23 "Because CARD physicians actually see
24 patients in a clinical setting, CARD physicians
25 make clinical diagnoses of the patients prior to

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1 A Again, this would be outside the expertise of our
2 position as technicians and as a Medicare lead.
3 Q All right. In your mind based on your review of
4 the facts is the answer to this question better
5 left to the CARD clinicians?
6 A Correct.
7 Q Okay. Paragraph 28.
8 "Many patients whom CARD physicians have
9 not clinically diagnosed with asbestos-related
10 disease are found to have positive interpretations
11 of chest x-rays for asbestosis or pleural plaques,
12 pleural thickening by B reader qualified
13 physicians or positive interpretation of CT scans
14 for asbestosis or pleural plaques or pleural
15 thickening by other qualified physicians."
16 "Based on these outside interpretations,
17 CARD fills out environmental health hazard
18 checklists for these patients, a CARD physician
19 signs the checklist, and CARD submits the
20 checklist to SSA."
21 Did I read that correctly?
22 A Yes.
23 Q The question, is this the proper course of action
24 for CARD for these patients, did I read that
25 correctly?

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1 filling out environmental health hazards
2 checklists for them. Meanwhile, B readers who
3 interpret chest x-rays and outside readers who
4 interpret CT scans do not make clinical diagnoses
5 because they never see the patients in a clinical
6 setting, but rather make interpretations of x-rays
7 and CT scans."
8 First, did I read that correctly?
9 A Yes.
10 Q Okay. In terms of your factual review of all the
11 information and material that was available to you
12 from SSA, do you have any comment on the first
13 part of paragraph 27 or is this something that
14 only a physician would know?
15 A I believe only a physician would know.
16 Q All right. The second part of paragraph 27.
17 "Do the positive interpretations of these
18 non-CARD physicians qualify as diagnoses for
19 purposes of the environmental health hazards
20 checklists even though they are not clinical
21 diagnosis."
22 The same questions. Is this information
23 information that you are able to obtain through
24 your factual review of the file, interviews with
25 SSA employees or any other sources?

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1 A You did.
2 Q In terms of the first part of response for
3 paragraph 28, is information about CARD physicians
4 clinically diagnosing patients compared to
5 B readers interpreting CTs and x-rays, is that
6 anything that is within your purview as an SSA
7 employee?
8 A No.
9 Q Do you have any response to paragraph 28 other
10 than what you just said or what we've been
11 discussing today?
12 A No.
13 Q Okay. Paragraph 29.
14 "Does the EHH checklist form referenced in
15 SSA POMS section HI 00803.001 and .050 indicate
16 that step 2 of the form is to be completed by a
17 healthcare provider who will identify the
18 asbestos-related conditions and its date of
19 diagnosis."
20 Other than shortening those policy
21 sections, did I read this correctly?
22 A Yes.
23 Q Have you addressed this topic already in your
24 testimony?
25 A I believe so.

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1 Q Is there anything else that needs to be covered
2 here in your view?
3 A No.
4 Q Turning to paragraph 36 of the subpoena.
5 "Has anyone at CARD informed the SSA field
6 office in Kalispell that CARD patients do not need
7 to have a diagnosis of asbestos-related disease in
8 order to qualify for federal benefits."
9 Did I read that correctly?
10 A Yes.
11 Q Aside from these e-mails from the timeframe of
12 March and April of 2023 which we have covered, has
13 anyone at CARD informed the SSA field office in
14 Kalispell that CARD patients do not need to have a
15 diagnosis of asbestos-related disease in order to
16 qualify for federal benefits?
17 A No.
18 Q Anything else on that topic?
19 A No.
20 Q Response 37. "Has any employee at the SSA field
21 office in Kalispell instructed CARD that patients
22 do not need to have a diagnosis of
23 asbestos-related disease in order to qualify for
24 federal benefits."
25 Did I read that correctly?

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1 patients qualify for Medicare benefits on a B read
2 chest x-ray interpretation of a lung abnormality
3 unrelated to asbestos exposure and without a
4 diagnosis of asbestos-related disease?
5 A No.
6 Q Paragraph 39. Has anyone at CARD informed the SSA
7 that it has submitted in excess of 100 EHH forms
8 signed by Dr. Black to the
9 Social Security Administration field office in
10 Kalispell on behalf of CARD patients when CARD had
11 actual knowledge that those patients had not been
12 diagnosed with asbestos-related disease?
13 A This my first time seeing this, I think, besides
14 reading the subpoena. Hold on. To my knowledge,
15 no.
16 Q Earlier I asked about whether or not CARD had
17 disclosed certain facts to the
18 Social Security Administration about the B read
19 only program or about the topic of submitting
20 undiagnosed patients to the SSA field office for
21 Medicare benefits without asbestos-related disease
22 diagnoses.
23 Do you recall that line of questions?
24 A Yes.
25 (WHEREUPON, Deposition Exhibit 137

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1 A You did.
2 Q And what is the answer?
3 A With my correspondence with manager
4 Terra Whiteman, we have never instructed CARD on
5 how to complete an EHH checklist or go over the
6 medical factors that are involved. It's outside
7 of our purview.
8 Q All right. And based on what you've learned from
9 Terra Whiteman about her response to this B read
10 only program, have you ever seen anything from
11 Terra Whiteman that would indicate to you that she
12 would have instructed CARD that patients do not
13 need to have a diagnosis of asbestos-related
14 disease in order to qualify for federal benefits?
15 A No.
16 Q And why not?
17 MR. KAKUK: Objection, scope.
18 A There is no record of that, and that's not within
19 policy. There would be no reason for her to
20 instruct her technicians on what a qualified
21 physician does by following section 1881A of the
22 act as it's outside the purview of our positions.
23 Q All right. Paragraph 28, and I will just ask the
24 question. Has any employee at the SSA field
25 office in Kalispell instructed anyone that CARD

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1 marked for identification by the reporter.)
2 BY MR. DUERK:
3 Q Okay. I would like to show you now what I am
4 marking as Exhibit 137, tab 8 in your book.
5 Do you see Exhibit 137 in front of you?
6 A Yes.
7 Q I will represent to you that this document,
8 document 110, has been filed in federal court in
9 front of the trial judge in this matter.
10 A Okay.
11 Q I will also represent to you that there are
12 several statements of fact here that are
13 undisputed by the CARD clinic.
14 A Okay.
15 Q I would like to read these to you, and my question
16 is this.
17 During your factual investigation and
18 inquiry did you see any documents or obtain any
19 statements from any witnesses or learn any
20 information that indicated that CARD had submitted
21 these statements to the SSA at any time from 2010
22 until the spring of 2023?
23 A No.
24 Q Okay. So what I want to do is go through them
25 statement by statement.

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1 A Okay.

2 Q So the first one, I will read it, and please tell

3 me if I have read it correctly.

4 "CARD has submitted EHH forms to the

5 Social Security Administration when CARD providers

6 were aware that the individual patient did not

7 have a clinical diagnosis of asbestos-related

8 disease. Undisputed."

9 Ms. Hillmann, to the best of your knowledge

10 based on your factual inquiry, did you see any

11 evidence that CARD prior to March and April of

12 2023 had ever submitted any kind of statement like

13 this to the social security administration?

14 A No.

15 Q The next statement. "Dr. Black, Tanis Hernandez

16 and Tracy McNew knew about CARD's practice of

17 submitting patient EHH forms for Medicare benefits

18 to social security for patients who did not have a

19 diagnosis of asbestos-related disease. Undisputed

20 that this is Ms. Hernandez's testimony."

21 Prior to the spring of 2023 or at any time,

22 frankly, based on your factual inquiry did you

23 come across information that CARD had submitted a

24 statement like this for SSA to consider?

25 A Prior to the spring of 2023, no.

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1 patients' cases based on a B read alone when

2 CARD's current medical director knew those

3 patients did not have an asbestos-related disease

4 diagnosis." Response, undisputed.

5 Did I read that correctly?

6 A Yeah.

7 Q The same question, Ms. Hillmann.

8 At any point to your knowledge did CARD

9 submit this statement to the Social Security

10 Administration?

11 A No.

12 Q The next statement.

13 "CARD's medical director testified multiple

14 patients' EHH forms were submitted to the Social

15 Security Administration for Medicare benefits even

16 though they did not have a CARD diagnosis of

17 asbestos-related disease." Response, undisputed.

18 Ms. Hillmann, the same question.

19 At any time prior to the spring of 2023 did

20 you come across any information indicating that

21 CARD had come forward with this statement to the

22 Social Security Administration?

23 A No.

24 Q The next statement.

25 "CARD knowingly submitted EHH forms to the

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1 Q The next statement.

2 "CARD continues its practice of submitting

3 patients EHH forms to Social Security

4 Administration who do not have a diagnosis of

5 asbestos-related disease. Undisputed."

6 Prior to the spring of 2023 based on your

7 factual inquiry did you ever see that CARD

8 submitted this statement to the SSA?

9 A No.

10 Q The next statement.

11 "CARD has submitted patients without a

12 diagnosis of asbestos-related disease to the

13 Social Security Administration for Medicare

14 benefits since at least 2013 and presumably since

15 the Affordable Care Act was passed in 2010.

16 Undisputed."

17 The same question. Ms. Hillmann, at any

18 time prior to the spring of 2023 did you see that

19 CARD had submitted any statements like this to the

20 Social Security Administration for any purpose,

21 for guidance, for response, for training, for any

22 reason?

23 A No.

24 Q The next statement.

25 "CARD submitted an EHH form on multiple

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1 Social Security Administration in support of

2 Medicare benefits for patients who had no clinical

3 diagnosis of asbestos-related disease.

4 Undisputed."

5 Did I read that correctly with the changes

6 indicated here?

7 A Yes.

8 Q Prior to the spring of 2023, did CARD ever come

9 forward to the Social Security Administration

10 telling the Social Security Administration that

11 they planned to do something like this?

12 A No.

13 Q "CARD has been signing EHH forms for patients

14 without a clinical diagnosis since the federal

15 grant started."

16 Did I read that correctly?

17 A Yes.

18 Q The response, undisputed.

19 Did I read that correctly?

20 A Yeah.

21 Q During your factual investigation into this matter

22 did you come across any evidence that CARD had

23 ever shared anything remotely like any of these

24 statements, including the one I just read, to the

25 Social Security Administration?

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1 A Prior to April of 2023, no.
 2 Q I'd like to take a short break.
 3 THE VIDEOGRAPHER: The time is 2:13. We
 4 are off the record.
 5 (Break taken.)
 6 THE VIDEOGRAPHER: The time is 2:34. We
 7 are back on the record.
 8 BY MR. DUERK:
 9 Q All right. After a short break, I am looking at
 10 the subpoena for trial testimony and all of the
 11 topics and paragraphs that we have attempted to
 12 cover today from paragraphs 17 to 22, paragraphs
 13 25 to 29 and paragraphs 36 to 39.
 14 Ms. Hillmann, have we now covered your
 15 responses to each of the paragraphs as set forth
 16 in the subpoena to the SSA?
 17 A Yes.
 18 Q Okay. I've got a few clarifications, but in terms
 19 of any substantive response in terms of the topics
 20 covered in the subpoena to the SSA, have we now
 21 essentially covered any response that you might
 22 have based on your factual review of the evidence
 23 and the underlying records that you examined in
 24 your inquiry?
 25 A Yes.

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1 in Exhibit 140 different in any material way that
 2 you see?
 3 MR. KAKUK: Objection, scope. Go ahead.
 4 MR. BECHTOLD: Objection, foundation.
 5 BY MR. DUERK:
 6 Q First of all, have you had a chance to look at
 7 each of these?
 8 A I looked at 141, but I haven't fully looked at
 9 140, but I am assuming that it was due to the
 10 pronoun changes that we made.
 11 Q Okay.
 12 A Yeah, that was part of that change.
 13 Q And again, I am not asking for any substantive
 14 policy differences that may be included here.
 15 A Okay.
 16 Q In fact, my question is geared towards showing the
 17 opposite to be true, if it is.
 18 A Yeah.
 19 Q Did you notice anything aside from pronoun changes
 20 or other grammatic changes that are apparent from
 21 the print in front of you?
 22 A No.
 23 Q The same question related to the other POMS
 24 section from Exhibit 76, POMS section 00803.050,
 25 Developing Medical Requirement for Entitlement to

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1 (WHEREUPON, Deposition Exhibit 140
 2 marked for identification by the reporter.)
 3 (WHEREUPON, Deposition Exhibit 141
 4 marked for identification by the reporter.)
 5 BY MR. DUERK:
 6 Q Okay. So just a couple of clarifications. I want
 7 to put in front of you what I have marked or what
 8 the court reporter has marked as Exhibit 140 and
 9 141.
 10 I will represent to you that each of these
 11 exhibits represent the updated POMS for the
 12 sections that we have been covering during your
 13 testimony today.
 14 Is that an accurate characterization in
 15 your mind?
 16 A Yes.
 17 Q Okay. Let's start with Exhibit 140. This is
 18 essentially the same POMS as Exhibit 75, POMS
 19 008031.001, Hospital Insurance Entitlement for
 20 Individuals Exposed to Environmental Health
 21 Hazards.
 22 Is that fair?
 23 A Yes.
 24 Q Okay. Based on your review of the earlier POMS
 25 published in Exhibit 75, is the same POMS section

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1 EHH Medicare.
 2 Do you see any changes in the new version
 3 that jump out at you other than pronoun changes?
 4 MR. KAKUK: The same objection.
 5 A No.
 6 Q Okay.
 7 MR. BECHTOLD: Foundation.
 8 BY MR. DUERK:
 9 Q All right. There were some questions about this
 10 timeframe from March 21st, 2023 and then the
 11 e-mails that we examined from the April 2023
 12 timeframe.
 13 What can you tell us about the difference
 14 between the March dates and the April dates and
 15 why is there a disconnect in that timeframe?
 16 A The timeframe between the e-mails?
 17 Q Not necessarily the timeframe between the e-mails,
 18 but the timeframe, the period of time between
 19 March 21st and those e-mails.
 20 A Well, I mean, I believe that's when the
 21 correspondence started, but based on -- I might
 22 have been incorrect about the date, but based on
 23 these e-mails, basically this is just one string
 24 of e-mails that I have been continuing to get from
 25 Terra regarding her correspondence with CARD.

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1 Q Okay.
 2 A Yeah.
 3 Q And in terms of where things left off with this
 4 e-mail train, based on your last review of
 5 e-mails, have we now looked at all of the e-mails
 6 on this topic that you had access to to the best
 7 of your recollection?
 8 A To the best of my recollection. There might be
 9 additional ones that, you know, CARD had sent from
 10 this date just kind of expanding on an earlier
 11 e-mail, but to my recollection I believe this is,
 12 you know, the majority of the question.
 13 Q Okay.
 14 A Yeah.
 15 Q And in terms of the initiation or how this
 16 question first came to light, is it your
 17 understanding that it came to light because of
 18 phone communication, not e-mail communication?
 19 A Correct.
 20 Q Okay. And might that in part explain the little
 21 bit of time connect between March 21st, 2023 and
 22 the e-mails that we see in April?
 23 A Yes.
 24 Q Okay. The last thing that I'd like to cover is
 25 you submitted a declaration in this case, is that

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1 MR. KAKUK: Objection, scope.
 2 A Yes.
 3 BY MR. DUERK:
 4 Q Ms. Hillmann, it has appeared to me that during
 5 your deposition where you have needed
 6 clarification in some of my questions rather than
 7 just guessing at my meaning you have asked for
 8 that clarification in order to provide clearer
 9 answers.
 10 Has that been your impression as well?
 11 A Yes.
 12 Q I thank you for your time today. I don't have any
 13 more questions at this moment. I am sure I will
 14 have some follow-up questions after Mr. Bechtold
 15 begins.
 16 A Okay.
 17 MR. DUERK: For just a moment though, I
 18 would like to make a record. I don't know if I
 19 need to do it on video or not. I guess we can
 20 redact it in this way.
 21 I'd just like to note that in terms of
 22 the exhibits related to the e-mails today,
 23 Exhibits 138 and 139, this is the first time
 24 that I have seen these e-mails and any
 25 attachments.

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1 correct?
 2 A Yes.
 3 (WHEREUPON, Deposition Exhibit 136
 4 marked for identification by the reporter.)
 5 BY MR. DUERK:
 6 Q And that declaration is at tab 2, and I will ask
 7 that we mark this declaration as Exhibit 136.
 8 Do you see Exhibit 136 in front of you?
 9 A Yes.
 10 Q Ms. Hillmann, is this your declaration?
 11 A Yes.
 12 Q And if you would take a look through it, I believe
 13 we have covered the topics outlined in this
 14 declaration.
 15 Is that your understanding also?
 16 A Correct.
 17 Q Okay. There is one specific section here that I'd
 18 like you to focus on. Do you see paragraph 7?
 19 A Yes.
 20 Q Okay. Is it still true that POMS section
 21 HI 00803000, et sec, meaning the entire section or
 22 those that follow, those sections titled Medicare
 23 entitlement for individuals exposed to
 24 environmental health hazards (EHH) are based on
 25 and mirror language from the Affordable Care Act?

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1 I do appreciate their disclosure today.
 2 However, I am also aware that there are
 3 approximately 2,500 e-mails that counsel for the
 4 CARD clinic received yesterday that I have not
 5 received. I don't know what the topic of those
 6 e-mails is.
 7 I don't know what they are about, who
 8 authored them, what the nature of those e-mails
 9 are. In essence, I'm surprised.
 10 I believe that I have had discovery
 11 pending now for several years with an obligation
 12 to replenish discovery related to any and all
 13 communications between CARD and the Social
 14 Security Administration, those discovery
 15 requests having been propounded on CARD.
 16 I would like to note that for the record
 17 that this is a surprise. I have done as best I
 18 could, given the circumstances, and I am content
 19 with the record that I have developed. However,
 20 I am not in favor of being surprised with any
 21 new correspondence or any other new discovery at
 22 this trial preservation deposition for
 23 Ms. Hillmann.
 24 And to that extent I will object to
 25 non-disclosure to any exhibits or materials that

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1 I haven't seen before right now if Ms. Hillmann
2 is asked to respond to those materials.
3 I just wanted to perfect that objection
4 for the record. With that, I think this portion
5 of the video, I would imagine, would be redacted
6 out, so I tender the witness.
7 MR. BECHTOLD: Well, let's just take a
8 break, and we'll do a switcheroo.
9 MR. DUERK: Sounds good.
10 THE VIDEOGRAPHER: The time is 2:46. We
11 are off the record.
12 (Break taken.)
13 THE VIDEOGRAPHER: The time is 2:54. We
14 are back on the record.
15 EXAMINATION
16 BY MR. BECHTOLD:
17 Q Ms. Hillmann, my name is Tim Bechtold, and I
18 represent the Center for Asbestos Related Disease
19 in this lawsuit.
20 And just to follow-up, so you have been
21 designated by the Social Security Administration
22 as the person with knowledge to provide responses
23 on behalf of the SSA, is that right?
24 A Correct.
25 Q And so you speak on behalf of the SSA, correct?

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1 A I need to find 75 and 76. Okay. These are the
2 different policies. Yes. Correct.
3 Q And so as of October of 2022, Exhibit 75 and
4 Exhibit 76 are no longer valid, correct?
5 MR. KAKUK: Objection, scope.
6 A They have been updated. That doesn't mean they
7 are not valid.
8 Q Okay. Excuse me. They have been superceded?
9 A Superceded with the same policy. The only change
10 is in pronouns.
11 Q Okay. Ms. Hillmann, I am going to hand you
12 Exhibit 332.
13 A Okay.
14 Q Could you take a look at that document?
15 A It's this document that I haven't seen.
16 MR. DUERK: Object, non-disclosure. Go
17 ahead.
18 BY MR. BECHTOLD:
19 Q So as I understand it, you have never seen
20 Exhibit 332 before?
21 A I have not. It was a part of your attached
22 e-mail, but I was never sent this attachment.
23 Q And as part of your preparation for your
24 deposition today did you contact any of the people
25 who work for the Social Security Administration?

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1 A Correct.
2 Q And your responses today are the official position
3 of the SSA, correct?
4 A Correct.
5 Q So we are getting your testimony today for your
6 convenience and capturing your testimony on video
7 to present to the jury at trial because the Social
8 Security Administration has represented that you
9 are not going to be available for trial, is that
10 right?
11 A To my knowledge, yes.
12 Q Earlier you testified that you had reviewed the
13 POMS HI 803.001 and 803.050, the e-mails, and
14 those are the POMS dealing with the application of
15 the section of the act, section 1881A, correct?
16 A Correct.
17 Q And they are the Social Security Administration's
18 internal regulations regarding the application of
19 the act?
20 MR. KAKUK: Objection, scope. Go for
21 it.
22 A They are our instructions for technicians to
23 process these claims.
24 Q All right. And I think as you testified, both
25 Exhibit 75 and 76 have been superceded, correct?

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1 A Yes, I did. I contacted headquarters, I contacted
2 our regional commissioner, I contacted the
3 district manager in Kalispell, and I contacted my
4 former counterpart that used to be the Medicare
5 lead prior to 2018.
6 Q Okay. And the people who were active in Libby for
7 the Social Security Administration in 2011, you
8 contacted them as well, correct?
9 A That is who that was. So that would be
10 Mary Lisa Lewandowski, that would be Kathy Suarez,
11 previously Suarez, now Will.
12 Q And I think you testified that you reviewed
13 e-mails between the Social Security Administration
14 and CARD, is that right?
15 A The e-mails from the spring 2023. There were no
16 prior e-mails for me to review. The only e-mails
17 prior to that were from headquarters to our
18 regional office on just the training and the
19 policies.
20 Q So I take it obviously the e-mail exists. You
21 just didn't look at it, is that right?
22 A This e-mail? I was never given this e-mail.
23 Q Why weren't you given that e-mail?
24 A I was not even made aware of this e-mail.
25 Q Did you ask Mary Lisa Lewandowski about the

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1 contact she had with CARD while she was in Libby?
2 A I asked for all correspondence.
3 Q Who did you ask for all correspondence from?
4 A All the people that I previously just gave to you
5 in my last question.
6 Q All right. So you did ask Mary Lisa Lewandowski
7 for all correspondence she had with CARD, and she
8 did not provide it to you, is that right?
9 A Well, I would not know if she just forgot about
10 this e-mail or didn't have this e-mail anymore
11 because our records, our e-mail records actually
12 drop off after seven years, so they are no longer
13 available, so she might not have kept it.
14 Q Okay. Could you take a look at Exhibit 332?
15 A Uh-huh.
16 MR. KAKUK: Mr. Bechtold, is this
17 somewhere in the record for me to look at as
18 well?
19 MR. BECHTOLD: Sure. It's Exhibit 332.
20 MR. KAKUK: In the trial exhibits?
21 Okay.
22 Q So your testimony is you have never seen this
23 before?
24 A No.
25 Q Okay. Would you look to the second page of

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1 health hazards checklist as Exhibit 76 and
2 Exhibit 141, correct?
3 A It appears to be that way. It does look like
4 there is one change.
5 Q What is the change?
6 A I've just got to make sure. The actual minimum
7 medical evidence required under malignancy of the
8 lung. It just added the bronchoscopy report.
9 Q Which version are you looking at?
10 A I am looking at this version, and I am also
11 looking at this version. So from this version to
12 this version. In this version it's different.
13 Q Okay.
14 A It added on the bronchoscopy report.
15 Q So instead of saying "this" let's identify them by
16 number.
17 A Okay.
18 Q The document you are referring to now is?
19 A Exhibit 332.
20 Q Okay. And 332?
21 A 332.
22 Q Then the next document that you looked at would be
23 Exhibit 76. So 332 is different from 76?
24 A And 332 is different than Exhibit 141.
25 Q Okay. Great. So the Social Security

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1 Exhibit 332. Can you tell me what that is?
2 A This is the environmental health hazards
3 checklist, the EHH checklist.
4 Q Is this the EHH checklist that has been in use
5 since May 20th of 2010 until the present?
6 A I would have to look at the actual policy. There
7 has been policy changes in HI 00803.50 and the
8 most recent one was done in October.
9 Q Sure. Take a look at it.
10 A Okay.
11 Q That's at page 2 of Exhibit 141.
12 A I got it. What was the date on this one?
13 Q The e-mail date is May 20th of 2010.
14 A Okay. It appears to be the same checklist.
15 Q And if you look at Exhibit Number 75.
16 A Is that in tab 4?
17 Q Excuse me. Exhibit 73, and look at page 4.
18 A Exhibit 73? Can you tell me what tab that is?
19 Q It's tab 3.
20 A Okay. Do you want me to check the checklist with
21 that one too? It appears to be the same one.
22 Q So from the e-mail that Mary Lisa Lewandowski sent
23 to Tanis Hernandez on May 20th, 2010 with that
24 environmental health hazards checklist attached to
25 it, it's the same version of the environmental

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1 Administration developed this EHH checklist,
2 correct?
3 MR. KAKUK: Objection, scope. Go for
4 it.
5 A I believe so. I mean, I can't -- you know, to be
6 honest, I know that CARD originally had the FLAME,
7 I believe it was the FLAME and the LAMP2 benefits,
8 and they had a questionnaire and that -- you know,
9 essentially they used that questionnaire, but then
10 we moved from the Affordable Care Act to the
11 section 1881A act. I believe social security put
12 this together to make sure that the physicians
13 were following the guidelines of section 1881A of
14 the act.
15 Q So as I understand your testimony, the Social
16 Security Administration put together the language
17 of this EHH checklist to make sure that the
18 physicians involved in step 2 were following the
19 provisions of section 1881A of the act?
20 A Correct.
21 MR. KAKUK: The same objection.
22 A Correct.
23 Q And your testimony is the reason they included
24 this language is to have it mirror the act,
25 correct?

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1 MR. KAKUK: The same objection.
2 A Did I say that previously? I guess I said that in
3 my deposition.
4 Q Your declaration?
5 A Declaration, yes.
6 Q Okay. So that's what you testified in your
7 declaration?
8 A Yes.
9 Q So did any Social Security Administration employee
10 provide any guidance at all to any CARD employee
11 on how to fill out an EHH checklist?
12 A No. That is outside the realm of our job. We are
13 not medical experts.
14 Q How many EHH checklists have come to the Social
15 Security Administration that were not from CARD?
16 A I would not know that off the top of my head. I
17 would have to -- that would take some time to
18 research, but there are outside physicians that do
19 fill these out besides the CARD clinic.
20 Q Would you agree that the CARD clinic does the vast
21 majority of them?
22 A To to my knowledge, they do, but again I would
23 have to research that to get the numbers, and that
24 would take some time.
25 Q Did the Social Security Administration ever give

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1 technician instructions.
2 Q Sure. And so the SSA sent staff to Libby after
3 the Affordable Care Act was passed, right?
4 A Correct.
5 Q And they set up shop in Libby?
6 A Set up shop? They trained our technicians within
7 the Kalispell office, yes.
8 Q And so what did they do in Libby?
9 A They took claims and they trained our SSA
10 employees in the Kalispell office.
11 Q When you say took claims, what does that mean?
12 A That means they took in Medicare claims.
13 Q What did they do?
14 A They processed Medicare claims, so they followed
15 the instructions within the policy and processed
16 any Medicare claims that they had at the time.
17 Q So as a practical matter, they sat down in a chair
18 and did what?
19 A They followed these instructions, so they would
20 follow -- if you go to HI 00803.50 they are
21 following the step-by-step instructions to make
22 sure that they could process this claim correctly.
23 Q Okay. So did people from Libby walk into their
24 office and sit down and say, hi, my name is
25 patient one?

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1 Exhibit 75 or Exhibit 76 to CARD?
2 A To my knowledge, well, Exhibit 332 clearly shows
3 Mary Lisa must have given it to them.
4 Q It looks like that's just the EHH checklist,
5 correct?
6 A That's what you're referring to, not the actual
7 policy, or are you talking about the actual
8 policy?
9 Q I am talking about the policy.
10 A Well, I don't know why we would give them the
11 policy. It's our instructions. It's our internal
12 instructions.
13 Q Okay.
14 A Yeah.
15 Q So those instructions are meant for the Social
16 Security Administration only, correct?
17 A Those instructions are meant for our technicians
18 only to process claims.
19 Q They're not meant for CARD?
20 A No, they're not.
21 Q They are not meant for anyone outside of Social
22 Security Administration?
23 A They can access it on our policy -- you know,
24 policy publications on the SSA.gov website, but I
25 mean I don't know why they would. It's our

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1 A I'm sure they came in and I'm sure they called,
2 but additionally we were just really setting up
3 shop to teach our technicians this policy and
4 train them correctly.
5 Q Okay. And who were the technicians there?
6 A The technicians at the time, I really would not
7 know that unless I reached out to Terra. I
8 believe Sonya Hymas might have been one of those
9 technicians, but to be honest with you that is
10 back in 2010-2011. You know, I would have to
11 check.
12 Q Did you ask Terra about who these people were?
13 A I just asked Terra if anything was followed
14 outside of policy. I didn't need to get the
15 specific technician's names. There was no reason
16 for it with the deposition.
17 Q Isn't one of the questions that you were asked to
18 answer is whether or not CARD people have been
19 trained by any SSA staff in Libby?
20 A Correct, and the district manager relayed to me
21 that they have not been.
22 Q But you didn't bother to check with anyone who was
23 actually in Libby and making those communications
24 with CARD, did you?
25 MR. DUEK: Objection, form. Go ahead.

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1 A She would have reached out to her employees,
2 because I had a number of questions for her and I
3 asked her to check with her technicians that were
4 there at the time.
5 Q But you don't know who those technicians were?
6 A Uh-uh.
7 Q So it's your testimony that Mary Lisa Lewandowski
8 for example never -- who was in Libby, right?
9 A She was in Libby.
10 Q And it's your testimony that she never
11 communicated with CARD staff about how to fill out
12 an EHH form?
13 A Correct.
14 Q And she never communicated with any CARD staff
15 about who determines whether an individual
16 qualifies for Medicare benefits, correct?
17 MR. DUERK: Objection, vague, use of the
18 term "communicated."
19 A Can you repeat that question? I'm sorry.
20 Q So no one from SSA in Libby communicated in any
21 way with CARD staff about who determines who
22 qualifies for Medicare benefits?
23 A Correct. That's outside the realm of our
24 position.
25 Q Does CARD determine whether an individual

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1 put a date of diagnosis, he completes step 3, he
2 prints his name, he puts his signature and his
3 date, then we are assuming that he followed
4 section 1881A of the act and that he agrees that
5 this person is diagnosed with that condition.
6 Q Right. And I think you testified that it's
7 outside of SSA's scope?
8 A Absolutely. We are not medical experts.
9 Q Right. And you would defer to the medical experts
10 to make that call, correct?
11 A Correct.
12 Q I am going to draw your attention to again
13 Exhibit 76, page 4, draw your attention to where
14 it says step 2.
15 Do you see that?
16 A Uh-huh.
17 Q And I think your testimony is that the Social
18 Security Administration has no input on step 2,
19 correct?
20 A That is correct. That would be filled out by the
21 provider or the physician.
22 Q And I think you testified too that if -- that what
23 you're assuming is that the physicians who are
24 following -- who are filling out step 2 are
25 following section 1881A of the act, correct?

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1 qualifies for Medicare benefits?
2 A Whatever physician completes that form should be
3 following that section 1881A of the act, so that's
4 all I can speak to on that.
5 Q Okay. But is it CARD who determine whether
6 someone qualifies for Medicare benefits?
7 A Well, CARD isn't the only physicians that complete
8 that checklist, so it's kind of like a vague
9 question to me.
10 Q Okay. Does the Social Security Administration
11 determine who qualifies for Medicare benefits?
12 A The Social Security Administration --
13 MR. KAKUK: Object to the scope. Sorry.
14 A -- follows HI 00803.050. We do not make the
15 medical determinations. We rely on the physicians
16 to complete the EHH checklist according to section
17 1881A of the act. We have nothing to do with the
18 actual medical requirements and medical review.
19 Q And is that physician the one who makes the final
20 call on whether someone gets Medicare benefits?
21 MR. KAKUK: The same objection.
22 A The physician that signs the form is basically
23 attesting to the information that he completed
24 within the form, so if he is stating that this
25 person is diagnosed, you know, and continues to

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1 A Correct.
2 Q And it's not your job to second-guess them,
3 correct?
4 A Absolutely. We are not medical experts.
5 Q Okay. And part of the -- it's the medical
6 provider's job to make a determination whether the
7 minimum medical evidence required is provided,
8 correct?
9 MR. KAKUK: Objection, scope.
10 MR. DUERK: Objection, form. Go ahead.
11 A Correct.
12 BY MR. BECHTOLD:
13 Q I think you testified that you first heard about
14 that CARD was providing -- CARD physicians were
15 providing the minimum medical evidence required
16 for step 2 as solely a B reader interpretation as
17 qualifying a person for Medicare in March of 2023,
18 is that right?
19 MR. DUERK: Objection, form. Go ahead.
20 A I think what I testified to is that I was informed
21 that CARD was sending our Kalispell district
22 manager an e-mail stating that they were
23 completing this form even though they didn't agree
24 that the person was diagnosed with that condition,
25 and based on that statement I instructed the

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1 Kalispell manager to, you know, make sure those
2 claims were denied, because that's not following
3 section 1881A of the act and that is not something
4 that we can process, and I think I mentioned
5 previously that we had an emergency message
6 10042REV that instructs our field offices in that
7 same direction.
8 Q And I think you have testified too that it is not
9 your call whether to make that determination in
10 step 2. It's the medical provider's call, isn't
11 it?
12 MR. DUERK: Objection, form. Go ahead.
13 A It is the medical provider's call to complete the
14 form, but we are assuming they are following
15 section 1881A of the act, and if they are telling
16 us that they don't find that person diagnosed with
17 that condition to me and they complete the form,
18 that looks like fraud.
19 Q Okay. May I ask you in step 2 where it says check
20 the box next to the diagnosed impairments and
21 print the date of the diagnosis, do you see that?
22 A Yeah, I do.
23 Q Now let's look at where it says "asbestosis."
24 A Uh-huh.
25 Q Impairment, asbestosis, diagnosis code 5010.

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1 tomographic radiograph of the chest by a qualified
2 physician."
3 The same question, does this satisfy the
4 minimum medical evidence required for a diagnosis
5 for purposes of the environmental health hazards
6 checklist?
7 MR. DUERK: Objection, form, foundation.
8 Go ahead.
9 A Again, this is outside of my purview, and if the
10 physician is following section 1881A of the act
11 and he completes this form following that, then I
12 would assume that he has found them diagnosed with
13 this condition.
14 Q Okay. So if a physician determined that someone
15 had -- if a qualified physician determined
16 based upon interpretation of a computed
17 tomographic radiograph of the chest by a qualified
18 physician and a different physician disagreed with
19 that diagnosis or that interpretation is that a
20 violation of section 1881A?
21 MR. KAKUK: Objection, scope.
22 A Again, that is outside of my purview.
23 Q You just told me that you thought it was
24 fraudulent.
25 A I think it's fraudulent when they are not

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1 A Uh-huh.
2 Q And then the minimum medical evidence required.
3 Do you see that?
4 A Uh-huh.
5 Q Do you see where it says, "Interpretation by a
6 B reader qualified physician of a plain chest
7 x-ray."
8 Do you see that?
9 A Uh-huh.
10 Q Is that what it said?
11 A Yes.
12 Q So would you agree that interpretation by a
13 B reader qualified physician of a plain chest
14 x-ray is the sufficient minimum medical evidence
15 required for a diagnosis for purposes of the
16 environmental health hazard checklist?
17 MR. DUERK: Objection, foundation.
18 A Sir, I can't speak on this form, because I am not
19 a medical expert. All I know is if they are
20 completing this form, they should be completing it
21 following the section 1881A of the act.
22 BY MR. BECHTOLD:
23 Q Okay. May I continue?
24 A Uh-huh.
25 Q Or, underlined, "Interpretation of computed

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1 following section 1881A of the act and they
2 disagree with the diagnosis, but they're
3 completing this form.
4 Q So if two physicians disagree on a diagnosis --
5 A The signing physician is the one giving the
6 diagnosis, so if the signing physician states that
7 this person is not diagnosed with this condition,
8 we are going to deny the claim, period.
9 Q Okay.
10 A Yeah.
11 Q So if the signing physician says based upon
12 section 1881A there are two ways to qualify for an
13 environmental health hazards checklist, correct?
14 MR. KAKUK: Objection, scope.
15 A Again, I don't get into section 1881A of the act
16 because that is outside of my purview.
17 What I have simply said here is if he
18 disagrees with the diagnosis, he or she or they,
19 and they complete this form and they're stating
20 they disagree that this person is diagnosed with
21 this condition, we are going to deny them. And to
22 me, it does look like fraud because they are
23 stating this person is diagnosed with this
24 condition even though they signed off and they
25 don't believe that that person has that condition.

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1 Q So you are stepping in now the interpretation
2 of -- stepping in to the determination by the
3 medical provider, is that right?
4 A I am not stepping into the interpretation. I am
5 stating if they are telling us that they don't
6 believe this person has been diagnosed with this
7 condition and they completed the form, we will
8 deny it. We don't get into section 1881A. That
9 is simply up to the physician.
10 Q So if the physician is following section 1881A, it
11 doesn't matter what you think about his diagnosis,
12 correct?
13 MR. DUERK: Objection, form.
14 MR. KAKUK: And scope.
15 A I don't believe that's what I said at all. If
16 they brought it to our attention that they don't
17 feel this person is diagnosed with this condition
18 but they completed the form, we will deny the
19 claim, bottom line. It's not up to social
20 security to determine this medical portion of the
21 policy.
22 Q So you just said both things. You said it's not
23 up to you determine the medical portion, but you
24 would determine the medical portion?
25 A Sir, I think you are kind of misconstruing what I

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1 sense for our technicians to process that.
2 And we have put it out in an emergency
3 message. If it is conveyed to us that they are
4 not truly diagnosed with this condition or let's
5 say they even just marked one of these but they
6 don't put the date of diagnosis, we are going to
7 deny it based on the policy that we gave them in
8 emergency message 10042REV, and that has been
9 since the beginning in 2010.
10 Q How many filled out EHH checklists have you seen?
11 A I honestly can't speak to that. I mean, I have
12 seen 15 to 20, but I mean that was just within
13 getting, you know, just example cases so we could
14 rewrite some language within different policies.
15 We had to take out a lead section of a policy. It
16 wasn't like I was reviewing them.
17 Q I am going to hand you what has been marked
18 Exhibit 516.
19 A Okay.
20 Q You've never seen that before, have you?
21 A No.
22 Q Take a look at the second page.
23 A Okay.
24 Q Do you recognize what that is?
25 A Yes. That's the environmental health checklist.

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1 am saying, because what I am saying is if a
2 physician completes this form and they're stating
3 that they feel this person is diagnosed with this
4 condition, gives a diagnosis date, completes 2,
5 you know, and section 3, prints their name,
6 physician signature and date, but then they say,
7 "But I don't think they are diagnosed with that
8 condition."
9 Big red flag. No, it's not going to go
10 through. We are going to deny it. Why would you
11 complete a form stating that you feel this person
12 is diagnosed, and then you are verbally telling me
13 or within an e-mail that you don't feel they are
14 diagnosed, that's contradictory and that doesn't
15 align with section 1881A of the act.
16 Q So now that's your interpretation of section 1881A
17 of the act, correct?
18 A It doesn't even need to be an interpretation. If
19 somebody is telling me they clearly filled out a
20 form that they don't agree with the diagnosis but
21 they signed off on it, doesn't that look to you
22 like fraud?
23 If I am completing this form and I am
24 saying this person is diagnosed, but guess what,
25 they are not really diagnosed, that does not make

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1 This typically would not come with this because
2 this is all we require.
3 Q And if you look at page 2 of Exhibit 516, do you
4 notice any handwriting in there?
5 A It says "outside read only." But it's also
6 missing the name, social security number and date
7 of birth of the person.
8 Q Yeah. They've been redacted.
9 A Okay. So I can't verify if this is a true,
10 completed claim.
11 Q No, I am not asking you to verify. I'm just
12 asking you to look at it.
13 A Okay.
14 Q Have you seen an EHH form that has similar
15 indications on it?
16 A No.
17 Q And how many EHH forms have been turned in by
18 CARD?
19 A I would have no idea off the top of my head. That
20 would take some time to research. You are talking
21 about going all the way back to like 2010.
22 Q Yeah. A lot?
23 A Yeah. Well, not just CARD. I mean, again,
24 you know, other physicians fill these forms out as
25 well.

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1 Q Sure.
 2 A Yeah.
 3 Q Would it surprise you that there are -- since the
 4 beginning of 2011 CARD has indicated when the
 5 qualification for Medicare based upon their
 6 determination by an outside B reader only has
 7 always been demarcated on the EHH form?
 8 MR. KAKUK: Objection to relevance and
 9 scope.
 10 MR. DUERK: And foundation. Go ahead.
 11 A I am not understanding your question exactly.
 12 Are you indicating like they write
 13 different comments within there, the checklist?
 14 Q Right.
 15 A Would it surprise me to know that they have been
 16 doing that? Yes, because I haven't seen a form
 17 like that.
 18 Q Has Terra Whiteman ever seen a form like that?
 19 MR. DUERK: Objection to foundation.
 20 A Again, this is my first time hearing it, so I
 21 wouldn't know.
 22 Q And that's not something you ever inquired of her,
 23 is it?
 24 A This is the first time I am hearing about it, so
 25 no.

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1 diagnosis.
 2 Q Right. And so what's the response?
 3 A It sounds like she has a B read DX, which to me
 4 would be a diagnosis. I don't know. We are not
 5 medical experts, so I would assume that DX means
 6 diagnosis. "I will look it up and get back to you
 7 momentarily." And she just basically says,
 8 "Thanks. That one I couldn't track down."
 9 Q And after the B read DX --
 10 A CW is a B read. It looks like I sent her EHH in
 11 2015. I will resend today.
 12 But to be honest here, I mean, Sonya is not
 13 going to be in a position to know what a B read
 14 is. She is asking if they are being diagnosed.
 15 That's the bottom line. We don't get into the B
 16 reads. You know, CARD can go on and on about
 17 B reads. They are completing that form. We are
 18 assuming they are following that section of the
 19 act, so I mean it's not Sonya's job to, you know,
 20 ask her about B reads or anything. She is asking
 21 for a diagnosis.
 22 Q Right. And CARD is telling her it's a B read
 23 diagnosis, right?
 24 A Yeah, but for her to be knowledgeable about
 25 B reads? We don't train them on that. She's not

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1 Q So as far as you know CARD has never outside of
 2 this one form that you see in front of you ever
 3 indicated on those EHH forms that the basis for
 4 their qualification, their finding of
 5 qualification for Medicare benefits was based upon
 6 solely an outside B read?
 7 A As far as I know, I have never seen anyone like
 8 this, and I haven't asked Terra about this because
 9 this the first time I am seeing one.
 10 Q Okay. I am going to hand you what has been marked
 11 as Exhibit 85. Take a look at that.
 12 A Okay. Okay.
 13 Q Go ahead and look through all the pages.
 14 A Okay. So this is back and forth from
 15 Sonya Peterson who was a claims technical expert
 16 to Mary Karen Caraway which I am assuming is with
 17 CARD, but it looks like she received a letter from
 18 one of the beneficiaries or claimants that she is
 19 now eligible for Medicare benefits regardless of
 20 her age based on these findings.
 21 One of the doctors did identify a small
 22 abnormality on your chest x-ray. Nothing has
 23 significant health indications nor is it
 24 considered a diagnosis of asbestos-related
 25 disease. And she is asking if there is a

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1 a medical expert. I think bottom line she is just
 2 looking for a diagnosis.
 3 Q Right. And CARD told her it was a B read
 4 diagnosis, isn't that right?
 5 A They did tell her it's a B read diagnosis, but I
 6 am assuming that she is assuming they completed
 7 the form correctly.
 8 MR. KAKUK: Can we go off the record for
 9 a second and take a short break?
 10 THE VIDEOGRAPHER: The time is 3:31. We
 11 are off the record.
 12 (Break taken.)
 13 THE VIDEOGRAPHER: The time is 3:38. We
 14 are back on the record.
 15 BY MR. BECHTOLD:
 16 Q Ms. Hillmann, I am going to draw your attention to
 17 Exhibit 135.
 18 A Okay.
 19 Q And direct your attention to paragraph 25, and
 20 paragraph 25 deals with the award that SSA
 21 presented to CARD, and I think your testimony is
 22 you don't know why SSA presented this award to
 23 CARD, correct?
 24 A Correct.
 25 Q And did you ask Terra Whiteman why?

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1 A I did not ask Terra Whiteman. I asked
 2 Mary Lisa Lewandowski, our regional commissioner,
 3 and I also asked headquarters. I was trying to
 4 locate any awards to get more additional
 5 information.
 6 Headquarters didn't have any awards on
 7 record for monetary value or just exemplary
 8 service, but Mary Lisa Lewandowski said there
 9 could have been a regional-level award, but she
 10 didn't have any record of it.
 11 **Q Why didn't you ask Terra Whiteman?**
 12 A Because she wouldn't have been the one to give out
 13 the award. It would have been the regional
 14 commissioner's office.
 15 **Q Do you know what Terra Whiteman looks like?**
 16 A Yes, I do. I see her on Zoom.
 17 **Q I am going to hand you Exhibit 336.**
 18 **Can you take a look at that?**
 19 A Okay.
 20 **Q You have never seen that before, have you?**
 21 A No.
 22 **Q What is that?**
 23 A It says it's a Center for Asbestos Related Disease
 24 (CARD) for outstanding partnership with SSA and
 25 Medicare outreach to individuals with

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1 who is the Kalispell manager. I am saying that
 2 the award would have come from the regional
 3 commissioner's office. We don't give awards out
 4 locally like that. That would be something either
 5 from headquarters or regional level.
 6 **Q So your testimony is that's not an SSA award?**
 7 A I did not say that. That could very well be one.
 8 We just didn't find any records of it.
 9 **Q Okay.**
 10 A Did you want your exhibit back?
 11 **Q No.**
 12 A Okay.
 13 **Q So not only -- you don't know why SSA gave this**
 14 **award, correct?**
 15 A Correct. This is my first time seeing it. But as
 16 I have said previously, Mary Lisa Lewandowski did
 17 say there could have potentially been a
 18 regional-level award for CARD, but she had no
 19 records of it.
 20 **Q So as I review your testimony, it is you don't**
 21 **know who the technicians were who went to Libby in**
 22 **2011, correct?**
 23 A The technicians from social security?
 24 **Q Yeah.**
 25 A From the regional office? I did list them.

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1 asbestos-related disease.
 2 **Q Is it an award from SSA to CARD?**
 3 A It appears to be so.
 4 **Q I am going to show you a photo.**
 5 A Okay.
 6 **Q And I apologize. Can you tell me who is in that**
 7 **photo?**
 8 MR. DUERK: Objection. Can we see a
 9 picture? Is this an exhibit?
 10 MR. BECHTOLD: Not yet. I didn't expect
 11 it to be.
 12 MR. DUERK: Non-disclosure.
 13 **Q Can you tell me who is in the photo?**
 14 A The only person that I kind of recognize is Terra
 15 over here in the black, unless she has died her
 16 hair.
 17 **Q And could you tell us what's going on in this**
 18 **photo?**
 19 A It appears that there is an award there, but I
 20 can't see what the award is for, if it's this one
 21 or what.
 22 **Q So you don't know which SSA employees went to**
 23 **Libby to present this award?**
 24 A I didn't know that SSA employees went to Libby to
 25 present the award, because that's Terra Whiteman

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1 **Q No, who were the technicians who were processing**
 2 **the Medicare claims.**
 3 A Oh, within the field office? No, I cannot name
 4 all of them offhand, but I can tell you
 5 Sonya Hymas was one of them.
 6 **Q Okay. So Sonya was one?**
 7 A Uh-huh.
 8 **Q Did you talk to Sonya Hymas about information**
 9 **required for this testimony today?**
 10 A Sonya Hymas hasn't been employed by this agency
 11 for I think maybe over a year, not even over a
 12 year, less than a year.
 13 **Q So the answer is no?**
 14 A No.
 15 **Q You didn't attempt to, did you?**
 16 A I would not contact her outside of social
 17 security. We don't have any kind of personal
 18 level like that.
 19 **Q Okay. What did you ask Terra Whiteman about**
 20 **regarding this deposition?**
 21 A Anything within the subpoena that I was looking
 22 for, any of the documents that you were -- you
 23 know, that you have listed or if there was any
 24 training that I was unaware of that, you know,
 25 headquarters hasn't had or the regional level

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1 office hadn't had where we gave some type of
 2 training to CARD, and she stated no.
 3 **Q Okay. So as I understand your testimony, you did**
 4 **not systematically go through the items in this**
 5 **subpoena, correct, with Terra Whiteman?**
 6 MR. DUERK: Objection, form. Go ahead.
 7 **A** I took pieces out of each of those questions and
 8 asked Terra about every single one of them.
 9 **Q Except the one about the award?**
 10 **A** No. I wouldn't ask her about the award because
 11 that would not come from her office. That would
 12 be either regional level or headquarters.
 13 **Q So I think you're contradicting yourself.**
 14 MR. DUERK: Objection, counsel
 15 testifying. Go ahead.
 16 BY MR. BECHTOLD:
 17 **Q Again, just to clarify this, you did not go**
 18 **through each of these numbered requests in the**
 19 **subpoena with Terra Whiteman, correct?**
 20 **A** I did not go through the one regarding the award.
 21 That was the only one I did not go through.
 22 **Q Okay. I am going to draw your attention back to**
 23 **paragraph 19, and I believe your testimony is that**
 24 **regarding paragraph 19 that Social Security**
 25 **Administration plays no role in step 2, is that**

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1 step 1 of the EHH checklist, correct?
 2 **A** Correct.
 3 **Q And is it Terra Whiteman's testimony that CARD's**
 4 **employees do not fill out SSA-827, the medical**
 5 **release forms and send that to -- and have the**
 6 **patients sign and send that to SSA?**
 7 **A** Correct.
 8 **Q And the only basis of your knowledge is what**
 9 **Terra Whiteman told you?**
 10 **A** Correct. And she was the district manager during
 11 that period of time, so she would know. She sees
 12 these EHH checklists and she knows how her
 13 technicians process these claims.
 14 **Q Okay. But you have no personal knowledge, right?**
 15 **A** I have no personal knowledge because I am not
 16 within that office, but I am taking the district
 17 manager's word at it from what she provided me.
 18 **Q Okay. And then that's your same testimony for**
 19 **paragraph 19, paragraph 20, paragraph 21 and**
 20 **paragraph 22, correct, regarding step 1?**
 21 **A** I believe so. I believe it involved the same
 22 thing where we fill out step 1. Step 2 and step 3
 23 are completed by the physician following section
 24 1881A of the act.
 25 **Q Right. And it's the physician's job to follow**

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1 correct?
 2 MR. DUERK: Objection, form. Go ahead.
 3 **A** I said that, yes.
 4 **Q And I think you testified that what's incorrect**
 5 **about this is that it's the Social Security**
 6 **Administration personnel who fill out step 1,**
 7 **correct?**
 8 **A** I said that they complete step 1, and then step 2
 9 and step 3 are completed by CARD following section
 10 1881A of the act.
 11 **Q Who did you talk to to find out that SSA employees**
 12 **fill out step 1?**
 13 **A** That's in policy. It's HI 00803.050. It's been
 14 in policy since the beginning.
 15 **Q And does that mean it's what actually happens?**
 16 **A** Yes.
 17 **Q So it's your testimony that EHH checklists are**
 18 **provided from SSA to CARD after step 1 is filled**
 19 **out?**
 20 **A** To the best of my knowledge, this is how we are
 21 supposed to be filing these claims, and this is
 22 how Terra Whiteman said that these claims are
 23 being processed. She confirmed that.
 24 **Q Okay. So it's your testimony that Terra Whiteman**
 25 **told you that CARD employees do not fill out**

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1 section 1881A of the act?
 2 **A** Correct. Yes.
 3 **Q And it's not your job to second-guess them?**
 4 **A** Uh-huh.
 5 **Q So regarding paragraph 26, so why does CARD fill**
 6 **out the EHH checklist?**
 7 **A** Why do they fill out section 2 and 3? Is that
 8 what you're asking?
 9 **Q No. I just said the EHH checklist.**
 10 **A** Because that's what they have to do when they are
 11 following section 1881A of the act. We are not
 12 medical experts. We don't diagnose patients with
 13 diseases. We are not doctors. We are not
 14 certified. We haven't gone to school for that.
 15 We are simply claims technicians processing
 16 claims.
 17 **Q So how do Social Security Administration employees**
 18 **look for asbestos-related disease or conditions in**
 19 **step 2?**
 20 **A** How do we look for them? We look -- if you go to
 21 the checklist, again, section 2, we are making
 22 sure that there is a listed impairment or two and
 23 there is a date of diagnosis and step 3 is
 24 completed, and then there is a printed name of a
 25 physician with the physician's signature and date.

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We are assuming the physician followed that section of the act.

Q And what's the difference between a clinical diagnosis and a diagnosis for purpose of the EHH checklist?

MR. KAKUK: Objection, scope.

MR. DUERK: Foundation. Go ahead.

A To be honest with you, that is not within policy and that's outside of the realm of my expertise. I couldn't answer that for you. I think that's more of a medical position, and I can't answer that.

Q Is it fair to say that SSA has no position?

A I would say that we don't get involved with that.

Q Okay.

A No.

Q And I think your testimony for paragraph 28 is again that's something where SSA doesn't get involved with, correct?

A Correct.

Q And I think for paragraph 29 you agreed that step 2 is completed by the healthcare provider who will identify the asbestos-related conditions and the date of diagnosis, correct?

A Correct.

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I don't believe they would be following section 1881A of the act. I can't speak on this form and what they complete on the checklist. We are assuming they are following the guidelines of section 1881A of the act.

Q So is it your job to interpret section 1881A of the act or is it the physician's job to interpret?

A That is the physician's job. If he completes that checklist and he states that they are diagnosed with that condition, we are assuming he followed the guidelines, he or she or they followed the guidelines of the act.

Q Again, you defer to his determination, correct?

A Yes, we defer to their determination, yes.

Q So when were you first made aware of this lawsuit?

A I think when we got the subpoena. I can't be too sure. I don't remember.

Q Was it several years ago or was it last year or was it a couple months ago?

A A couple months ago, this year.

Q So you were never made aware of any requests from any of the parties for information in this case?

A They wouldn't send those directly to me. They would send those to the appropriate parties if there was a disclosure request.

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Q That's not SSA's job?

A That is not SSA's job. We are not medical experts.

Q So it's not SSA's job to determine whether someone could be diagnosed by an interpretation of a computed tomographic radiograph of the chest by a qualified physician, right?

A SSA's job is to make sure this form is completed, and it is stating that this person is diagnosed with one of these listed conditions with the date of diagnosis and has been signed off by a physician that has been following section 1881A of the act.

Q I am going to draw your attention to Exhibit 123 which is tab 7 in your book.

A Okay.

Q Did the patient in Exhibit 123 have a diagnosis under section 1881A of the act?

MR. KAKUK: Objection, scope.

A This is just a letter from CARD stating that -- I mean, this is the first time I am seeing this letter, and it's saying, "You participated in an asbestos health screening on 12-11-14, and at that time you were not diagnosed with an asbestos-related disease."

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Q And you being the --

A Medicare lead.

Q The medicare lead would not -- you would not be an important person to inform about requests for information for Medicare information?

A I believe they were trying to get information from about 2010 to whenever. That would not be a time period I was a Medicare lead. I wouldn't be the appropriate party to obtain that information from.

Q And when did you become the Medicare lead?

A 2018.

Q And it's the Social Security Administration's position that no information post 2018 was asked for?

MR. KAKUK: Objection, scope.

A I would not know. I was not asked to supply any documentation to my knowledge.

Q Has the Social Security Administration been aware that CARD has filled out EHH forms for individuals based only on outside reader interpretations since 2010?

A The first knowledge that we had of them completing an EHH checklist where they said that they -- they stated that the person -- the physician didn't feel that person was diagnosed with that condition

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1 was in spring 2023. That is the first time that
 2 we are hearing about this.
 3 **Q I am going to hand you Exhibit 83.**
 4 **A** Okay.
 5 **Q Take a look at that.**
 6 **A** Do you want me to read it?
 7 **Q Do you recognize what that document is?**
 8 **A** That is an e-mail from a Kalispell employee,
 9 Sonya Peterson or Sonya Hymas who is a claims
 10 technical expert to one of the CARD center
 11 employees, I am assuming, and she said if the
 12 claimant has been diagnosed with one of the
 13 impairments on that list, they qualify, so to us
 14 either they are diagnosed or they are not.
 15 **Q Okay. So let's start at the bottom where the**
 16 **e-mail train starts.**
 17 **A** Okay.
 18 **Q And so describe what's happening in this e-mail.**
 19 **A** She contacted them, and she said this guy called
 20 and said he has not been diagnosed with an
 21 asbestos-related condition, but said you told him
 22 to call us.
 23 **Q Okay. And that's Sonya's e-mail to CARD, correct?**
 24 **A** Correct. And then CARD wrote back.
 25 "Hi Sonya. TT is not diagnosed, but has

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1 that.
 2 **Q Correct. Does SSA have any opinion on what the**
 3 **difference between a clinical diagnosis of**
 4 **asbestosis, pleural thickening or pleural plaques**
 5 **by a CARD physician?**
 6 **MR. KAKUK:** Objection, scope.
 7 **Q Compared to a positive interpretation of**
 8 **asbestosis, pleural thickening or pleural plaques**
 9 **on a CT by a qualified physician for purposes of**
 10 **the EHH checklist?**
 11 **MR. DUERK:** Sorry. Objection, form.
 12 **MR. KAKUK:** And scope.
 13 **A** Again, that's outside of my purview, and I have to
 14 say I don't have an opinion because I am not a
 15 medical expert.
 16 **Q Why don't we go off the record for a little bit.**
 17 **I am going to do a quick review, and then probably**
 18 **about five minutes.**
 19 **A** Okay.
 20 **THE VIDEOGRAPHER:** The time is 4:00. We
 21 are off the record.
 22 (Break taken.)
 23 **THE VIDEOGRAPHER:** The time is 4:07. We
 24 are back on the record.
 25 **BY MR. BECHTOLD:**

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1 received a positive outside read making him
 2 eligible for the EHH designation. It is always
 3 difficult for me explaining to a patient that they
 4 are not diagnosed, but then need to call you guys
 5 to receive the benefits. In the future, should
 6 patients with positive outside reads just state
 7 that they have positive outside read or just state
 8 they are diagnosed? Sorry about the confusion."
 9 And Sonya followed policy and stated, "If
 10 the claimant has been diagnosed with one of the
 11 impairments on that list, they qualify."
 12 So to us, either they are diagnosed or they
 13 are not, and that is inside the scope of
 14 HI 00803.050. She is not going into specifics
 15 about a B read or any of that, because that's not
 16 her job.
 17 **Q Right.**
 18 **A** Right.
 19 **Q So it's CARD's job to make that determination?**
 20 **A** Correct.
 21 **Q All right. And it's SSA's job to defer to CARD?**
 22 **A** It's SSA's job to make sure that whoever is
 23 completing that EHH checklist is following the
 24 guidelines of section 1881A of the act. If this
 25 is completed, we are assuming they are following

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1 **Q Ms. Hillmann, as I understand your testimony, you**
 2 **have no personal knowledge of communications**
 3 **between CARD staff and SSA staff at the Kalispell**
 4 **level, correct?**
 5 **A** I do have knowledge of the spring 2023
 6 correspondence between the CARD staff and
 7 Terra Whiteman, but prior to that, no.
 8 **Q Okay. And again you have no personal knowledge of**
 9 **how CARD staff and SSA staff in Kalispell handled**
 10 **EHH forms, correct?**
 11 **A** I do know that our SSA staff follows that
 12 HI 00803.050 based on Terra Whiteman's response
 13 who is the district manager.
 14 **Q Okay. And if it turns out that CARD staff are the**
 15 **one who actually are filling out step 1, does that**
 16 **make those EHH checklists invalid?**
 17 **A** I wouldn't assume they would be invalid as long as
 18 they are completing step 2 and step 3. It's just
 19 that we should be following the proper
 20 instructions within the policy where we initiate
 21 that on our side.
 22 **Q But it doesn't invalidate those EHH checklists?**
 23 **A** Uh-uh.
 24 **MR. KAKUK:** That was a no?
 25 **A** That was a no.

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1 BY MR. BECHTOLD:
2 Q So I would like to draw your attention to
3 Exhibit 136 which is your declaration that you
4 submitted earlier in this case.
5 A Okay.
6 Q In paragraph 1 you state that you searched SSA's
7 electronic records which included archived
8 policies and information stored on the agency's
9 drive?
10 A Correct.
11 Q Did that include e-mail communications?
12 A It would not necessarily mean e-mail
13 communications. It's our T-drive where we store
14 any type of Libby correspondence that Kathy kept,
15 the previous Medicare lead.
16 Q So did it include e-mail correspondence or not?
17 A There was e-mail correspondence between Kathy and
18 then headquarter components about training our
19 field offices.
20 Q But as far as you know, there was no e-mail
21 communications between SSA staff and CARD staff?
22 A Correct.
23 Q And then you stated you further consulted with
24 current agency personnel who may have been
25 involved in CARD's interaction during this period,

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1 2011 timeframe regional office personnel
2 interacted with employees from CARD because CARD
3 prepared the EHH Medicare claims for submission to
4 SSA.
5 What was the nature of the interaction?
6 A I believe they were just doing Medicare EHH
7 outreach, so they were outreaching to the
8 community to find individuals affected, and I
9 think that they might have like -- potentially the
10 only contact that they had with them is about the
11 Medicare outreach, and if they had questions
12 about, you know, if they were missing forms or
13 what have you regarding the claims process.
14 Q So as I understand it, Medicare eligibility based
15 on the EHH checklists is something that the SSA
16 technicians in Libby were processing at that time?
17 MR. KAKUK: Objection, scope.
18 A Yeah. Can you reread that question? I guess I
19 didn't understand it fully.
20 Q So the Medicare technicians -- excuse me. The SSA
21 technicians were processing Medicare claims based
22 upon the EHH checklists in Libby?
23 A They were basing it following the instructions in
24 HI 00803.50.
25 Q And the EHH checklist is a SSA created document,

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1 and is that Mary Lisa Lewandowski and
2 Terra Whiteman?
3 A Correct.
4 Q Anyone else?
5 A I also contacted a couple other technicians that
6 went out there to provide the training. That
7 would be Kelly Hansen. She is currently a
8 supervisor within our regional office, and also
9 Chris DiGiacomo was another technician that went
10 out there to provide training to the social
11 security technician, and he is also a manager as
12 well.
13 Q Did you contact Nancy Berrihill at that time?
14 A No, I did not.
15 Q And she was in Libby at that time, correct?
16 A She did come for one -- I believe one training.
17 It might have been two.
18 Q And she still works for SSA, right?
19 A Correct.
20 Q How come you didn't talk to her?
21 A Because I went directly through our regional
22 commissioner who would have a little bit more
23 information, and if she needed to reach out to
24 Nancy, she would.
25 Q In paragraph three you state that in the 2010 to

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1 correct?
2 A Correct.
3 Q And SSA gave that document to CARD without any
4 directions, correct?
5 A To my knowledge, yes. But CARD has been
6 instructed to continue to follow the section 1881A
7 of the act.
8 Q Okay. Who instructed CARD to follow section 1881A
9 of the act?
10 A I would not know. I mean, I am assuming that that
11 was some type of correspondence at some time. I
12 don't know they would just complete a checklist
13 without knowing they have to follow the guidelines
14 of the act. I am sure there is correspondence in
15 there somewhere.
16 Q Okay. So you are sure that there is
17 correspondence from SSA to CARD telling them to
18 follow section 1881A of the act?
19 A Well, I don't know if it's directly from SSA. I
20 mean, I am just assuming that it's probably
21 underneath their grant guidelines for them to
22 perform, you know, those type of reviews within
23 their clinic.
24 Q Okay. So you don't know?
25 A I don't know. I do know that they do get grants

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1 and they base them off of certain things, so I
2 can't speak to that. That's outside of my
3 purview.
4 Q Okay. But as far as you know, there was never
5 anything from SSA to CARD telling them how to fill
6 out the EHH checklist?
7 A Correct.
8 Q And as far as you know, there was never any
9 informal communication of any type between CARD
10 staff and SSA staff about how to fill out these
11 EHH checklists, correct?
12 A Correct.
13 Q And you base that upon your communications with
14 Mary Lisa Lewandowski and Terra Whiteman?
15 A Correct, and the headquarters components.
16 Q What are the headquarters components again?
17 A The office of information security programs and
18 then the office of program support. I'm going to
19 mess -- It's OPSOS. It is office of program
20 support. I can't think of the last two of that
21 acronym, but those are two headquarters components
22 that have trained and actually initiated this
23 policy when it originally came out.
24 Q So once the SSA employees process an environmental
25 health hazards checklist, what happens next?

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1 Q Oh, I do have something further. I want to hand
2 you what was an attachment to Exhibit 139.
3 A Okay.
4 Q Have you seen this document before?
5 A I have not.
6 Q If you look at Exhibit 139, you see on page 1 of
7 139 at the bottom where there is an e-mail from
8 Tracy McNew to Terra Whiteman.
9 A Uh-huh. I received this e-mail, but I did not
10 receive this attachment, so this is the first time
11 I am seeing it.
12 Q Okay. So your testimony is that Terra Whiteman
13 forwarded you the e-mail but did not forward you
14 the attachment to the e-mail?
15 A Correct.
16 Q Okay. That's all the questions.
17 EXAMINATION
18 BY MR. DUERK:
19 Q I have just a few follow-ups.
20 A Okay.
21 Q Mr. Bechtold asked you whether or not CARD had
22 been informed by SSA about how to fill out EHH
23 checklists.
24 Do you remember that question?
25 A Yes.

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1 A Once they process it? Well, again, the
2 instructions in HI 00803.50 if they follow that
3 and the EHH checklist is complete there is a
4 diagnosis checked, there is a date of diagnosis,
5 section 3 is completed, printed name of the
6 physician, physician signature and date. We are
7 assuming that physician followed section 1881A of
8 the act, and we process the claim.
9 Q So what does it mean to process the claim?
10 A We allow them for EHH Medicare.
11 Q When you say allow, what does that mean?
12 A We process an allowance to entitle them to
13 Medicare under the environmental health hazards
14 provisions.
15 Q So what do the SSA employees do to make that
16 happen?
17 A They take a claim within our system and they code
18 it appropriately and then they process it, and it
19 sets up the record and it sends a Medicare card.
20 Q Okay. So SSA processes it and inputs it into the
21 system and the system -- they have been approved
22 and the system then gives them Medicare benefits?
23 A Correct.
24 Q Okay. I have nothing further. Thank you.
25 A Uh-huh.

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1 Q Okay. Regardless of whether you can point to any
2 communication between SSA and CARD today on that
3 topic, based on what information you have reviewed
4 in your factual inquiry, are resources readily
5 available to the public about how to fill out EHH
6 checklists in terms of the POMS, section 1881A of
7 the Affordable Care Act itself, and the emergency
8 policy 10042REV that you referenced earlier?
9 A Those are public-facing policies. That means the
10 public can obtain those, yes.
11 Q And did each of those sources of information that
12 are publicly-available provide clear direction in
13 terms of the requirements of a CARD patient or any
14 patient in order to obtain Medicare benefits?
15 MR. KAKUK: Objection, scope.
16 MR. BECHTOLD: Form.
17 A Yes, for EHH Medicare, yes. Correct.
18 Q And are you aware of that just based on your own
19 personal knowledge having seen those documents?
20 A Uh-huh.
21 Q Is that a yes?
22 A That's a yes.
23 Q Okay. Now, Ms. Hillmann, you may or may not be
24 aware of this, but are you aware that even CARD's
25 website itself says you need a diagnosis of

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1 asbestos-related disease in order to get Medicare?

2 A No, I was not aware of that.

3 Q All right. In terms of questions that

4 Mr. Bechtold asked you about any type of training

5 that might have been provided or wasn't provided

6 to CARD from any of these different SSA employees,

7 I believe Mary Lisa Lewandowski is somebody that

8 you spoke to about this issue of training, is that

9 right?

10 A Correct.

11 Q Did you speak with Terra Whiteman or Whiteman

12 about the issue of training also?

13 A Yes.

14 Q There was some other names that you mentioned

15 among SSA staff related to this topic of CARD and

16 whether or not any SSA training occurred.

17 Do you remember any of the other names of

18 individuals?

19 A The regional office employees that train the SSA

20 staff in Kalispell, that would be Kelly Hansen.

21 Q Okay.

22 A And then Chris DiGiacomo, and I believe I said

23 Nancy Berrihill as well. I did speak with

24 Kelly Hansen and I did speak with Chris DiGiacomo,

25 and they also verified that they never gave CARD

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1 A Yeah.

2 Q And in terms of where those field employees would

3 have gotten information about how to fill out an

4 EHH form, is it fair to assume that would have

5 been from the POMS?

6 A It would have been directly from POMS.

7 Q Right.

8 A Yeah.

9 Q Nothing in the POMS mentions that patients are

10 eligible for Medicare on a B read alone, correct?

11 MR. KAKUK: Objection, scope.

12 MR. BECHTOLD: Form.

13 A Correct.

14 BY MR. DUERK:

15 Q All right. Nothing in the POMS, none of the

16 language in the POMS that you have read states

17 that it's acceptable to submit a patient for

18 Medicare without a diagnosis of asbestos-related

19 disease, correct?

20 MR. KAKUK: The same objection.

21 MR. BECHTOLD: Form.

22 A Correct.

23 BY MR. DUERK:

24 Q And I am basing that on language you yourself have

25 read in the POMS, fair?

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1 any training as well.

2 Q In terms of all of the interviews conducted and

3 all of the written material you received, did

4 every source of information point to the same

5 response that SSA did not train CARD how to fill

6 out these EHH forms at the CARD clinic at any

7 time?

8 A Correct.

9 Q Okay. Now, I want to entertain a hypothetical

10 here. The hypothetical that I want to entertain

11 is if somehow someone like Sonya Hymas,

12 Sonya Peterson, if an SSA field office employee

13 had provided training to CARD about how to fill

14 out an EHH form, if that had occurred, would that

15 training have been based on what those SSA field

16 agents had been instructed according to the POMS?

17 A I can't speak to the -- I don't know what they

18 would train them on. Honestly, they would just

19 train them on this section has to be completed,

20 this section has to be completed, because we are

21 not medical experts, so I don't believe training

22 would be beneficial for CARD, because we are not

23 medical experts and we can't speak to the section

24 1881A of the act because we're not trained on it.

25 Q All right.

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1 A Yes.

2 Q Okay. Mr. Bechtold asked you if you had any

3 personal knowledge of the communication between

4 CARD and SSA. I believe you said you didn't have

5 any personal knowledge of that communication, but

6 during your factual inquiry related to that topic

7 did you review a certain amount of communication

8 between CARD and the Social Security

9 Administration?

10 A I can only speak to what I received in the spring.

11 That's the only correspondence that I have seen

12 between social security and CARD.

13 Q Okay.

14 A Yeah.

15 Q And in terms of any discussions with any of the

16 members of the Social Security Administration that

17 we have mentioned today, did you ask specific

18 questions of them about whether there was any

19 communication they were aware of between CARD and

20 the SSA related to the issues of training or

21 notice or any of these other issues that we have

22 discussed today?

23 A I did reach out to Terra Whiteman on the majority

24 of the questions except for the one about the

25 award, and then I did ask Kelly Hansen and

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1 Chris DiGiacomo if -- again, I am just going to
 2 reiterate what I said in my previous statement.
 3 Did we give any additional, do you know if we gave
 4 any additional training to the CARD employees, and
 5 they all stated that we hadn't to their knowledge.
 6 Q And Terra Whiteman was based in -- where is
 7 Terra Whiteman based now?
 8 A Kalispell.
 9 Q And how long has Terra Whiteman been based in
 10 Kalispell?
 11 A Oh, goodness. I would say -- I would have to
 12 actually ask her, but she has been there for quite
 13 some time.
 14 Q Okay.
 15 A Yeah. Most of her tenure has been in that office.
 16 Q Mr. Bechtold had you look at two exhibits,
 17 Exhibit 85, an e-mail between Sonya and Mary Karen
 18 Caraway.
 19 Do you have that in front of you?
 20 A If I can find it. Let me see. Give me one
 21 second.
 22 Q Why don't we take a five-minute break and we will
 23 organize the documents and then get back on the
 24 record.
 25 A Okay.

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1 A Correct.
 2 Q Okay. So if the CARD clinic represents to the
 3 Social Security Administration that a patient has
 4 a diagnosis, in SSA's view that patient is
 5 Medicare eligible, fair?
 6 A If the CARD clinic presents us with that checklist
 7 with one of the diagnoses that are listed with the
 8 date of diagnosis and completes 2 and 3, then yes.
 9 Q All right.
 10 A Yeah.
 11 Q Nowhere in this e-mail train does it say that this
 12 patient does not have a diagnosis, correct, except
 13 in the first e-mail that kicks this all off?
 14 The subsequent pages don't say anywhere
 15 affirmatively this patient is not sick, fair?
 16 A To the best of my knowledge, yes.
 17 Q Okay. Nowhere in this e-mail does CARD tell the
 18 SSA that they are submitting patients for Medicare
 19 benefits without a diagnosis as a routine
 20 practice, correct?
 21 A Correct.
 22 Q Okay. In terms of policy, if a patient has been
 23 diagnosed by CARD with one of the impairments of
 24 asbestos-related disease due to asbestos exposure,
 25 they qualify for Medicare?

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1 THE VIDEOGRAPHER: The time is 4:27. We
 2 are off the record.
 3 (Break taken.)
 4 THE VIDEOGRAPHER: The time is 4:30. We
 5 are back on the record.
 6 BY MR. DUERK:
 7 Q All right. After a short break, Ms. Hillmann, do
 8 you have Exhibit 85 in front of you?
 9 A I do.
 10 Q Mr. Bechtold referenced this e-mail during your
 11 cross-examination. This is about a patient with
 12 some questions from SSA as to whether or not the
 13 patient has been diagnosed.
 14 Is that a fair representation?
 15 A Yes.
 16 Q Okay. On page 2 does the e-mail from CARD
 17 indicate that this patient has a B read diagnosis?
 18 A To me, I would read it that way, but I am not a
 19 medical expert. I would assume DX means
 20 diagnosis.
 21 Q Okay.
 22 A Yeah.
 23 Q And so if that interpretation is correct, is CARD
 24 saying this patient has a B read diagnosis, but I
 25 need to check on some other information?

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1 A Yes. If it's one of the ones listed within the
 2 checklist and they complete that checklist
 3 following section 1881A of the act, yes.
 4 Q All right. So in terms of Exhibit 83 that
 5 Mr. Bechtold showed you, an e-mail from Sonya --
 6 between Sonya Peterson and Stephanie Moore,
 7 Ms. Peterson says, "If a claimant has been
 8 diagnosed with one of the impairments on that
 9 list, they qualify, so to us, either they are
 10 diagnosed or they aren't."
 11 Did I read that correctly?
 12 A Correct.
 13 Q And so basically, Ms. Hillmann, if a patient has
 14 been diagnosed they are eligible for Medicare, and
 15 if they have not been diagnosed, they aren't
 16 eligible for Medicare?
 17 MR. KAKUK: Objection, scope.
 18 A Correct.
 19 BY MR. DUERK:
 20 Q Okay. Is that a fair interpretation in your mind?
 21 A Yes.
 22 Q Ms. Hillmann, I have no further questions, and I
 23 appreciate your time here today. Thank you.
 24 A Thank you.
 25 MR. BECHTOLD: I am going to do a brief

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1 re-cross.
2 MR. DUERK: I will object, but go ahead.
3 EXAMINATION
4 BY MR. BECHTOLD:
5 Q If the judge kicks it, he'll kick it.
6 So you testified that there is nothing in
7 the POMS that qualifies an individual for Medicare
8 eligibility based on a B reading alone, correct?
9 Do you remember that testimony you just
10 gave?
11 A Did I just give that testimony?
12 MR. KAKUK: The same objection.
13 MR. DUERK: Objection, form. Misstates
14 the testimony. Go ahead.
15 A I think the testimony that I gave was what's in
16 HI 00803.50 and it's our instruction to our
17 technicians. It states if that checklist is
18 completed, you know, section 1, section 2,
19 section 3, we are assuming that the physician
20 followed section 1881A of the act and provided an
21 appropriate diagnosis based on their
22 interpretation of that act.
23 MR. BECHTOLD: Annie, can you scroll
24 back for me to her testimony about nothing in
25 POMS?

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1 A Correct.
2 MR. KAKUK: Objection, scope.
3 BY MR. BECHTOLD:
4 Q So would you agree that Exhibit 75, the POMS, and
5 also Exhibit 142, right? 140?
6 MR. DUERK: 75 and 140 are the same.
7 BY MR. BECHTOLD:
8 Q Yeah. 75 and 140 both indicate that an ARD
9 diagnosis established by a diagnostic method
10 specified in the law, so for example, if we looked
11 on Exhibit 75 and the examples 1, 2 and 3 where
12 they state Mr. Brown received an ARD diagnosis
13 established by a diagnostic method specified in
14 the law or Mr. James received an ARD diagnosis
15 established by a diagnostic method specified in
16 the law or Ms. Jackson received an ARD diagnosis
17 established by a diagnostic method specified in
18 the law, so is SSA's interpretation of section
19 1881A is that a B reading alone is not a
20 diagnostic diagnosis established by a diagnostic
21 method as specified in the law?
22 MR. KAKUK: Objection, scope.
23 MR. DUERK: Objection, form, compound
24 and foundation. Go ahead.
25 A Can you read that back to me? I'm sorry.

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1 THE COURT REPORTER: In this answer
2 right now?
3 MR. BECHTOLD: No.
4 THE COURT REPORTER: Previous?
5 MR. BECHTOLD: Previous.
6 THE COURT REPORTER: How far previous
7 and during whose examination?
8 MR. BECHTOLD: During the beginning of
9 Mr. Duerk's examination.
10 MR. KAKUK: Of his cross, right, of his
11 re-direct?
12 MR. BECHTOLD: Of his re-direct.
13 MR. KAKUK: Yeah.
14 THE COURT REPORTER: Well, let me go to
15 it. One moment.
16 (Discussion off steno record.)
17 (Testimony read back as follows:)
18 Question: Nothing in the POMS mentions
19 that patients are eligible for Medicare on a
20 B read alone, correct?
21 Answer: Correct.
22 A I agree with that.
23 BY MR. BECHTOLD:
24 Q Okay. So nothing in POMS says that a person is
25 eligible based on a B reading alone?

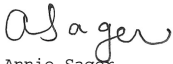
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1 (Read back.)
2 A I meant his question. I'm sorry.
3 THE COURT REPORTER: Isn't that the
4 question?
5 A Was it the same question?
6 THE COURT REPORTER: That's the
7 question.
8 A Because that doesn't sound the same because you
9 asked me --
10 Q Go ahead. Finish the question.
11 A I'm sorry.
12 THE COURT REPORTER: That's okay.
13 (Read back.)
14 MR. DUERK: The same objections.
15 A Again, I can't speak to that. That's outside of
16 my purview. I am not a medical expert that
17 interprets section 1881A of the act.
18 I was asked if that language was within
19 this policy section that's given to our
20 technicians and I said -- he asked me you would
21 say that this language was not within this policy,
22 and I agreed and I said correct.
23 Q Okay. So your testimony is that the specific
24 words "B reading alone" is not found in POMS?
25 A It's not found in policy, within this policy that

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1 he asked me about.
2 Q And your testimony isn't meant to have any
3 implication about Medicare eligibility based upon
4 section 1881A?
5 MR. DUERK: Objection, form.
6 A I would have to agree with that because, again,
7 that's outside of my purview and I can't speak to
8 section 1881A of the act.
9 Q Okay. Those are all the questions I have.
10 MR. DUERK: Thank you for your time.
11 Thanks for being here.
12 THE WITNESS: Yeah. Thanks.
13 THE VIDEOGRAPHER: Okay. That concludes
14 today's proceedings. The time is 4:41 and we
15 are off the record.
16 THE COURT REPORTER: Thank you.
17 Mr. Duerk, would you like to purchase the
18 transcript?
19 MR. DUERK: Yes, please.
20 THE COURT REPORTER: And Mr. Bechtold,
21 would you like to purchase?
22 MR. BECHTOLD: Yes.
23 THE COURT REPORTER: Okay.
24 MR. KAKUK: We would like one as well.
25 (Deposition concluded at 4:41 PM.)

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1 STATE OF COLORADO)
2) ss. REPORTER'S CERTIFICATE
3 COUNTY OF DENVER)
4
5 I, Annie Sager, certify that I am a
6 Court Reporter and Notary Public within the
7 State of Colorado; that previous to the
8 commencement of the examination, the deponent
9 was duly sworn to testify to the truth.
10 I further certify that this deposition
11 was taken in shorthand by me at the time and
12 place herein set forth and was thereafter
13 reduced to typewritten form, and that the
14 foregoing constitutes a true and correct
15 transcript.
16 I further certify that I am not related
17 to, employed by, nor of counsel for any of the
18 parties or attorneys herein, nor otherwise
19 interested in the result of the within action.
20 In witness whereof, I have affixed my
21 signature this 30th day of May, 2023.
22 My commission expires June 25, 2023.
23
24 
25 Annie Sager
216 Sixteenth Street, Suite 600
Denver, Colorado 80202

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1 I, HEATHER HILLMANN, do hereby certify
2 that I have read the foregoing transcript and
3 that the same and accompanying amendment sheets,
4 if any, constitute a true and complete record of
5 my testimony.
6
7
8
9 _____
10 Signature of Deponent
11 () No amendments
12 () Amendments attached
13
14 Acknowledged before me this _____ day of
15 _____ 2023.
16
17 Notary Public: _____
18 My Commission Expires _____
19 Seal:
20
21
22
23
24
25

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1 AB LITIGATION SERVICES
2 216 Sixteenth Street, Suite 600
3 Denver, Colorado 80202
4 May 30, 2023
5 Michael Kakuk, Assistant U.S. Attorney
6 U.S. Department of Justice
7 United States Attorney's Office
8 901 Front Street, Suite 1100
9 Helena, Montana 59626
10 Re: Deposition of Heather Hillmann
11 BNSF vs. CARD
12 Case No. CV-19-40-M-DLC
13
14 The aforementioned deposition is ready for reading and
15 signing. Please attend to this matter by following BOTH of
16 the items indicated below:
17 _____ Call 303-296-0017 and arrange with
18 us to read and sign the deposition in our
19 office
20
21 _____ Have the deponent read your copy and sign the
22 signature page and amendment sheets, if
23 applicable; the signature page is attached
24
25 _____ Read the enclosed copy of the deposition and
26 sign the signature page and amendment sheets,
27 if applicable; the signature page is attached
28
29 _____ WITHIN 30 DAYS OF THE DATE OF THIS LETTER
30
31 _____ By _____ due to a trial date of _____
32
33 Please be sure the original signature page and amendment
34 sheets, if any, are SIGNED BEFORE A NOTARY PUBLIC and
35 returned to AB Litigation Services for filing with the
36 original deposition. A copy of these changes should also be
37 forwarded to counsel of record. Thank you.
38
39 AB LITIGATION SERVICES
40 cc: All Counsel

1 AB LITIGATION SERVICES
2 216 Sixteenth Street, Suite 600
3 Denver, Colorado 80202
4
5 HEATHER HILLMANN
6 May 16, 2023
7 BNSF vs. CARD
8 Case No. CV-19-40-M-DLC
9
10 The original deposition was filed with
11 W. Adam Duerk, Esquire, on approximately the
12 30th day of May, 2023.
13 _____ Signature waived
14 _____ Signature not requested
15 _____ Unsigned; signed signature page and amendment
16 sheets, if any, to be filed at trial
17 _XXX_ Unsigned; original amendment sheets and/or
18 signature pages should be forwarded to
19 AB Litigation Services to be filed in the envelope
20 attached to the sealed original
21
22 Thank you.
23
24 AB LITIGATION SERVICES
25 cc: All Counsel

- AMENDMENT SHEET -
Deposition of HEATHER HILLMANN
May 16, 2023
BNSF vs. CARD
Case No. CV-19-40-M-DLC
The deponent wishes to make the following changes in the
testimony as originally given:
Page Line Should Read Reason

Signature of Deponent: _____
Acknowledged before me this ____ day of
_____, 2023.
(seal) Notary's signature _____
My commission expires _____

Transcript of Monica Nolan, Designated Representative

1 (1 to 4)

Conducted on June 8, 2023

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MONTANA</p> <p>3 - - - - - x</p> <p>4 BNSF RAILWAY COMPANY, :</p> <p>5 On behalf of THE UNITED :</p> <p>6 STATES OF AMERICA : Civil Action No.</p> <p>7 Plaintiff, : CV-19-40-M-DLC</p> <p>8 v. :</p> <p>9 THE CENTER FOR ASBESTOS :</p> <p>10 RELATED DISEASE, INC., :</p> <p>11 Defendant. :</p> <p>12 - - - - - x</p> <p>13</p> <p>14 Videotaped Deposition of the</p> <p>15 SOCIAL SECURITY ADMINISTRATION, BY AND THROUGH</p> <p>16 ITS DESIGNATED REPRESENTATIVE,</p> <p>17 MONICA NOLAN</p> <p>18 REMOTE</p> <p>19 Thursday, June 8, 2023</p> <p>20 10:04 a.m. EST</p> <p>21</p> <p>22</p> <p>23 Job No.: 496083</p> <p>24 Pages: 1 - 129</p> <p>25 Transcribed By: Janice Willier</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 ADAM DUERK, ESQUIRE</p> <p>4 KNIGHT NICASTRO MACKAY</p> <p>5 283 W Front Street</p> <p>6 Suite 20</p> <p>7 Missoula, Montana 59802</p> <p>8 406-206-7052</p> <p>9</p> <p>10 ON BEHALF OF THE DEFENDANT:</p> <p>11 TIMOTHY BECHTOLD, ESQUIRE</p> <p>12 BECHTOLD LAW FIRM, PLLC</p> <p>13 317 East Spruce Street</p> <p>14 Missoula, Montana 59802</p> <p>15 406-721-1435</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Videotaped deposition of MONICA NOLAN, held</p> <p>2 remotely:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Pursuant to notice, before Shawn Cavaliere,</p> <p>11 Notary Public in and for the State of Maryland.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 ON BEHALF OF THE U.S. ATTORNEY'S OFFICE:</p> <p>3 MICHAEL KAKUK, ESQUIRE</p> <p>4 SARAH BERRY, ESQUIRE</p> <p>5 ASSISTANT U.S. ATTORNEY</p> <p>6 U.S. ATTORNEY'S OFFICE</p> <p>7 P.O. Box 8329</p> <p>8 105 E. Pine Street, 2nd Floor</p> <p>9 Missoula, Montana 59802</p> <p>10 406-457-5262</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 Andrew Stromberg, Remote Tech</p> <p>17 Tracy Mcnew, CEO for CARD</p> <p>18 Brendon Skipper, Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Exhibit C-1

Conducted on June 8, 2023

<p>5</p> <p>1 C O N T E N T S</p> <p>2 EXAMINATION OF MONICA NOLAN PAGE</p> <p>3 By Mr. Duerk 8</p> <p>4 By Mr. Bechtold 79</p> <p>5 By Mr. Duerk 112</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 EXAMINATION EXHIBIT PAGE</p> <p>12 75 POMS Document 30</p> <p>13 76 EHH Document 15</p> <p>14 135 Public Law Document 113</p> <p>15 305 Public Law Document 82</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 Whereupon,</p> <p>2 MONICA LEE NOLAN,</p> <p>3 Having been first duly sworn, was examined and</p> <p>4 testified as follows:</p> <p>5 MR. DUERK: Thank you. Mr. Kakuk, I</p> <p>6 understand that you have a brief statement to put</p> <p>7 on the record before we get underway.</p> <p>8 MR. KAKUK: Yes, thank you, Adam. As</p> <p>9 before with Ms. Hillman's deposition, I'd just</p> <p>10 like to note that the Social Security</p> <p>11 Administration has designated Ms. Nolan today</p> <p>12 specifically for specific requests in the subpoena</p> <p>13 sent to Social Security. And those requests are 1</p> <p>14 through 16, 23 and 24, 30 through 35, and 40 to</p> <p>15 44. Which are essentially the remaining requests</p> <p>16 after the deposition of Ms. Hillman.</p> <p>17 And so any questions outside of the scope</p> <p>18 of those requests, Social Security would like to</p> <p>19 make sure that everybody is aware that that means</p> <p>20 essentially two things. One, that the Social</p> <p>21 Security Administration was not required to</p> <p>22 prepare Ms. Nolan for that question, if it's</p> <p>23 beyond the scope. And secondly, any answer that</p> <p>24 Ms. Nolan gives would not be, therefore, on behalf</p> <p>25 of the Social Security Administration.</p>
<p>6</p> <p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins the remote</p> <p>3 video deposition of Monica Nolan, in the matter of</p> <p>4 BNSF Railway Company v. The Center of Asbestos</p> <p>5 Related Disease, Inc., in the United States</p> <p>6 District Court for the District of Montana, case</p> <p>7 number CV-19-40-M-DLC.</p> <p>8 Today's date is June 8, 2023. The time on</p> <p>9 the video monitor is 10:05 a.m., Eastern Standard</p> <p>10 Time. The remote videographer today is Brendon</p> <p>11 Skipper, representing Planet Depos. All parties</p> <p>12 of this video deposition are attending remotely.</p> <p>13 Would counsel please voice identify</p> <p>14 themselves and state whom they represent.</p> <p>15 MR. DUERK: Adam Duerk, for Realtor BNSF.</p> <p>16 MR. BECHTOLD: Tim Bechtold, on behalf of</p> <p>17 the CARD Clinic.</p> <p>18 MR. KAKUK: And Michael Kakuk, on behalf</p> <p>19 of the United States and the Social Security</p> <p>20 Administration.</p> <p>21 MS. BERRY: Sarah Berry, on behalf of the</p> <p>22 Social Security Administration.</p> <p>23 THE VIDEOGRAPHER: The court reporter</p> <p>24 today is Shawn Cavaliere, representing Planet</p> <p>25 Depos. The witness will now be sworn.</p>	<p>8</p> <p>1 MR. DUERK: Thank you, Michael.</p> <p>2 EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>3 BY MR. DUERK:</p> <p>4 Q Ms. Nolan, good morning. I'm Adam Duerk.</p> <p>5 Would you please state your full legal name for</p> <p>6 the record, spelling your last name?</p> <p>7 A Sure. Monica Lee Nolan, N-O-L-A-N.</p> <p>8 Q Ms. Nolan, thank you for being here today.</p> <p>9 I'll just call you Ms. Nolan, pursuant to our</p> <p>10 local rules and practices here in Montana, if</p> <p>11 that's okay with you?</p> <p>12 A Certainly.</p> <p>13 Q Thank you. Ms. Nolan, have had your</p> <p>14 deposition taken in the past?</p> <p>15 A No.</p> <p>16 Q All right. I'll cover some basic ground</p> <p>17 rules with you. If you have any questions for me</p> <p>18 or the other counsel present, that's just fine.</p> <p>19 If you need to take break for any reason to</p> <p>20 consult with counsel, that's okay too. Does that</p> <p>21 make sense to you?</p> <p>22 A Yes.</p> <p>23 Q All right. A few other basic ground rules</p> <p>24 -- and I'll try to get through these as quickly as</p> <p>25 I can. But we're making an official transcript</p>

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Exhibit C-2

Conducted on June 8, 2023

<p>1 today in anticipation of an official proceeding, 2 that being trial. And we anticipate that your 3 testimony will be played in full. However, 4 although your testimony is trial testimony, it's 5 okay if we need to take breaks. The jury and the 6 judge won't be inconvenienced here. Does that 7 make sense to you? 8 A Yes. 9 Q Also it's important that we try to shoot 10 for a clear record. So if I start to speak over 11 you or you are speaking any of the questioning 12 attorneys, that doesn't necessarily make for a 13 very clear record. So I'll try to indicate that 14 we need to put a stop to that somehow. Does that 15 make sense? 16 A Yes. 17 Q All right. Ms. Nolan, I'll represent to 18 you that it's not my intent to confuse you or ask 19 questions in a confusing manner. If that happens 20 with anyone today, rather than guessing at our 21 meaning and convoluted questions, if you would 22 just raise your hand and stop and ask me or others 23 to rephrase. I think that would be helpful. Does 24 that make sense to you, also? 25 A Yes.</p>	<p>1 subpoena for trial testimony issued to the Social 2 Security Administration? 3 A Yes. 4 Q And what have you done in order to look at 5 the different topics issued in that subpoena? 6 A I reviewed the POMS. I reviewed the 7 legislation, the Affordable Care Act, 1881A, I 8 believe. And that's really about it, those basic 9 resources. Check my e-mails, like, historical 10 e-mails. But I didn't have much information 11 specific to EHH. 12 Q All right. It's my understanding that an 13 SSA employee has already been deposed in this 14 matter. Her name is Heather Hillman. Have you 15 had any conversations with Heather Hillman about 16 her testimony? 17 A No. 18 Q In terms of any conversations with any 19 other individuals, outside of legal counsel for 20 SSA, did you have any substantive conversations 21 with anyone else in preparing your testimony 22 today? 23 A No. 24 Q Okay. In terms of any other written 25 materials, e-mails, handbooks, documents of any</p>
<p>1 Q All right. Thank you, Ms. Nolan, I 2 appreciate it. 3 Ms. Nolan, what is your occupation? 4 A I'm a supervisor for the Office of 5 Earnings, Enumeration, and Medicare Policy at the 6 Social Security Administration. 7 Q And where are you based? 8 A In Baltimore, Maryland headquarters. 9 Q How long have you been so employed with 10 the Social Security Administration, or SSA? 11 A For 27 years. 27 years. 12 Q What are some of your primary job 13 responsibilities in that occupation? 14 A In my current position I oversee a couple 15 of policy areas including Medicare. That includes 16 reviewing, revising, creating policy based on 17 legislation or a change in legislation. We are 18 also are involved with certain other entities, 19 agencies, for enumeration related policy as well 20 as earnings related policy in addition to 21 Medicare. 22 Q Ms. Nolan, it's my understanding that 23 you've been designated as the 30(b)(6) deponent 24 for SSA. Is it your understanding that you have 25 been designated address the topics related to the</p>	<p>1 kind, other than the POMS sections that you 2 mentioned and the Social Security Act, have you 3 reviewed any other e-mails that we haven't 4 discussed yet? 5 A No. 6 Q All right. What I'd like to do is focus 7 on some of the POMS. Do you have printed copies 8 in front of you? 9 A I do not. 10 Q All right. Are you familiar with the 11 different sections of POMS 00803.001 and 12 00803.050? 13 A Yes. 14 Q Okay. If you could just generally 15 describe for me what -- what the POMS are, that 16 would be helpful. 17 A Okay. The POMS are instructions that are 18 written for our technicians to carry out 19 programatic claims, taking claims, or programatic 20 policies. 21 Q And how were the POMS distributed within 22 the Social Security Administration? 23 A Can you clarify when you say distributed, 24 how do the technicians review them or how do we -- 25 Q How do you make them?</p>

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Exhibit C-3

Conducted on June 8, 2023

<p>13</p> <p>1 A Okay. So there is an a pretty</p> <p>2 comprehensive process for getting POMS to the</p> <p>3 publication state. That includes the writing, the</p> <p>4 crafting, and then sharing across the agency. So</p> <p>5 OGC, operations systems, legislative operations,</p> <p>6 there are many opponents that actually review the</p> <p>7 POMS, provide input, guidance. Those comments are</p> <p>8 reconciled in the policy component more often than</p> <p>9 not and then sent back out for an executive level</p> <p>10 review. And once that is approved at the</p> <p>11 executive level, they're published.</p> <p>12 Q And in terms of the way that those POMS</p> <p>13 sections are published, are those POMS made</p> <p>14 available, not just to employees at the Social</p> <p>15 Security Administration, but to members of the</p> <p>16 general public as well, through SSA's website?</p> <p>17 A There are some that are published</p> <p>18 publicly, yes.</p> <p>19 Q All right. Ms. Nolan, I'll represent to</p> <p>20 you that I have copies of the POMS that I believe</p> <p>21 I was able to access on SSA's website. To your</p> <p>22 knowledge, are you aware of whether or not the SSA</p> <p>23 POMS sections that I just referenced are available</p> <p>24 to the public generally?</p> <p>25 A Yes, those two sections are.</p>	<p>15</p> <p>1 interpretations of the law or how it's written</p> <p>2 instead of following the POMS?</p> <p>3 A The expectation is that the technicians</p> <p>4 follow the POMS.</p> <p>5 Q Ms. Nolan, what I'd like to do is focus on</p> <p>6 Exhibit 76.</p> <p>7 MR. DUERK: Is there a way that we could</p> <p>8 publish the exhibit for Ms. Nolan's benefit?</p> <p>9 THE VIDEOGRAPHER: Sure. Please stand by.</p> <p>10 MR. DUERK: Thank you.</p> <p>11 THE COURT REPORTER: And would you like</p> <p>12 those just marked as, like, Nolan 1 or --</p> <p>13 MR. DUERK: No, the exhibits forward</p> <p>14 should have their own exhibit stickers.</p> <p>15 THE COURT REPORTER: Yeah, I do see that.</p> <p>16 Okay, cool. Stand by. One second.</p> <p>17 MR. DUERK: Thank you.</p> <p>18 THE COURT REPORTER: Exhibit 76 is now up.</p> <p>19 MR. DUERK: Great, thank you.</p> <p>20 BY MR. DUERK:</p> <p>21 Q Ms. Nolan, do you see what's been marked</p> <p>22 as Exhibit 76 in front of you?</p> <p>23 (Thereupon, Exhibit 76 was marked for</p> <p>24 identification.)</p> <p>25 A Yes.</p>
<p>14</p> <p>1 Q Okay. In terms of how the POMS are</p> <p>2 implemented, do you have any knowledge of how the</p> <p>3 POMS that we'll be referencing today may have been</p> <p>4 implemented by the Kalispell field office in</p> <p>5 Kalispell, Montana with the Social Security</p> <p>6 Administration?</p> <p>7 MR. BECHTOLD: Objection, scope.</p> <p>8 Q Okay. Ms. Nolan, let me rephrase. It's</p> <p>9 my understanding that you are here to speak about</p> <p>10 policy issues but not necessarily factual issues</p> <p>11 raised in the subpoena. Is that your</p> <p>12 understanding also?</p> <p>13 A Yes.</p> <p>14 Q Okay. I'll try to stick to policy issues</p> <p>15 exclusively. Let me ask it this way, from the</p> <p>16 policy level do you have any information about how</p> <p>17 the POMS are distributed to field office staff</p> <p>18 with the Social Security Administration?</p> <p>19 A The POMS are located on our internal</p> <p>20 website and individuals actually select the</p> <p>21 section based on whatever they are working on and</p> <p>22 they follow those instructions verbatim.</p> <p>23 Q Okay. All right. To the best of your</p> <p>24 knowledge, are Social Security Administration</p> <p>25 field staff at liberty to come up with their own</p>	<p>16</p> <p>1 Q Does this appear to be a true and accurate</p> <p>2 copy of the Program Operations Manual System, or</p> <p>3 system -- the POMS, for section HI 00803.050,</p> <p>4 Developing Medical Requirement for Entitlement to</p> <p>5 EHH Medicare?</p> <p>6 A Yes, I know there are a couple. There</p> <p>7 should be another section. But this appears</p> <p>8 accurate.</p> <p>9 Q All right. I'd like to read the first</p> <p>10 section under part A.</p> <p>11 MR. DUERK: I'm sorry, I just heard some</p> <p>12 speaking in the background. Are we okay? All</p> <p>13 right.</p> <p>14 BY MR. DUERK:</p> <p>15 Q I'd just like to read section A for you.</p> <p>16 Please tell me if I've read it correctly, okay?</p> <p>17 A Yes.</p> <p>18 Q Section A, Medical Requirement for</p> <p>19 Entitlement to EHH Medicare. An individual</p> <p>20 exposed to environmental health hazards, EHH, in</p> <p>21 Lincoln County, Montana, must meet the medical</p> <p>22 requirement for entitlement to EHH Medicare. He</p> <p>23 or she must have been diagnosed with an</p> <p>24 asbestos-related disease, ARD, established by</p> <p>25 certain diagnostic methods.</p>

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Exhibit C-4

Conducted on June 8, 2023

<p>1 Did I read that correctly?</p> <p>2 A Yes.</p> <p>3 Q Okay. In terms of this section, based on</p> <p>4 the Program Operations Manual and the other</p> <p>5 materials that you have reviewed, in order to</p> <p>6 receive Medicare benefits is it true that an</p> <p>7 individual must have been diagnosed with an</p> <p>8 asbestos-related disease?</p> <p>9 A Yes.</p> <p>10 Q All right. In terms of the EHH checklist,</p> <p>11 is that a document that you've reviewed yourself?</p> <p>12 A Yes.</p> <p>13 Q All right. I'd like to review that EHH</p> <p>14 checklist which, I believe, is set forth on page 4</p> <p>15 of Exhibit 76.</p> <p>16 MR. DUERK: If we could please publish</p> <p>17 that for the witness.</p> <p>18 BY MR. DUERK:</p> <p>19 Q Ms. Nolan, do you see the Environmental</p> <p>20 Health Hazards Checklist, subtitled Medicare</p> <p>21 Coverage for Individuals Exposed to Environmental</p> <p>22 Health Hazards in front of you?</p> <p>23 A Yes.</p> <p>24 Q Ms. Nolan, does this appear to be a true</p> <p>25 and accurate copy of an EHH checklist that is part</p>	<p>19</p> <p>1 conditions and its date of diagnosis. In</p> <p>2 parenthesis it says here, completed by the</p> <p>3 provider. Did I read that correctly?</p> <p>4 A Yes.</p> <p>5 Q In terms of the term in parenthesis here,</p> <p>6 the provider, what is your understanding of who</p> <p>7 that individual would be?</p> <p>8 A The medical provider.</p> <p>9 Q Okay. So Ms. Nolan, just generally in</p> <p>10 terms of all of the information filled out on Step</p> <p>11 2 of this form, would it be your understanding and</p> <p>12 expectation, according to the POMS, that these</p> <p>13 boxes would be filled out by the health care</p> <p>14 provider, who in this case involving CARD, would</p> <p>15 be the physician or health care provider who</p> <p>16 diagnosed the CARD patient who has been submitted</p> <p>17 for potential Medicare eligibility?</p> <p>18 A Yes.</p> <p>19 Q All right. So in terms of the columns</p> <p>20 here below Step 2, do you see a column titled</p> <p>21 impairment, with a number of different diagnosed</p> <p>22 impairments listed?</p> <p>23 A Yes.</p> <p>24 Q Okay. I'll be focusing on just two of</p> <p>25 those impairments today, asbestosis and pleural</p>
<p>18</p> <p>1 of the POMS policy that we've been discussing so</p> <p>2 far?</p> <p>3 A Yes.</p> <p>4 Q All right. I'd like to read a few</p> <p>5 sections of this form, just to orient us and then</p> <p>6 I'll ask you some questions, okay?</p> <p>7 A Yes.</p> <p>8 Q Step 1 here says, identify the individual.</p> <p>9 In parenthesis the section says completed by the</p> <p>10 field office. Did I read that right?</p> <p>11 A Yes.</p> <p>12 Q Ms. Nolan, in terms of the field office,</p> <p>13 are you aware of what the field office is as</p> <p>14 indicated on this form?</p> <p>15 A Do I know what the term field office</p> <p>16 means?</p> <p>17 Q Yes.</p> <p>18 A Yes.</p> <p>19 Q Okay. And in terms of your understanding</p> <p>20 of the term, field office, would this term apply</p> <p>21 to, say, the Kalispell field office for the Social</p> <p>22 Security Administration?</p> <p>23 A Yes.</p> <p>24 Q All right. Step 2 of the EHH form reads,</p> <p>25 identify the asbestos-related condition or</p>	<p>20</p> <p>1 thickening, or pleural plaques. Do you see those</p> <p>2 diagnose impairments listed?</p> <p>3 A Yes.</p> <p>4 Q All right. Do you see a diagnosis code</p> <p>5 for each of those impairments listed as 5010?</p> <p>6 A Yes.</p> <p>7 Q Do you see the minimum medical evidence</p> <p>8 required column?</p> <p>9 A Yes.</p> <p>10 Q For both asbestosis and pleural</p> <p>11 thickening, pleural plaques I'd like to read the</p> <p>12 language there. Please tell me if I've read it</p> <p>13 correctly, okay?</p> <p>14 A Yes.</p> <p>15 Q This column is titled Minimum Medical</p> <p>16 Evidence Required; interpretation by a B reader</p> <p>17 qualified physician of a plain chest x-ray or</p> <p>18 interpretation of computed tomographic radiograph</p> <p>19 of the chest by a qualified physician.</p> <p>20 Did I read that correctly?</p> <p>21 A Yes.</p> <p>22 Q And that language appears for both the</p> <p>23 asbestosis, pleural thickening, and pleural</p> <p>24 plaques column; is that right?</p> <p>25 A Correct.</p>

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Exhibit C-5

Conducted on June 8, 2023

<p>21</p> <p>1 Q Okay. I'll have more questions about that</p> <p>2 in a moment but first I'd like to address the rest</p> <p>3 of the form.</p> <p>4 If we could please scroll down to the next</p> <p>5 set of boxes. Please stop there. Thank you.</p> <p>6 Ms. Nolan, in the far left column of the</p> <p>7 EHH form do you see a check box for a description</p> <p>8 saying, individual does not have an impairment</p> <p>9 listed above?</p> <p>10 A Yes.</p> <p>11 Q Ms. Nolan, is it your understanding that</p> <p>12 if an individual does not have one of the</p> <p>13 diagnosed impairments listed, the physician or the</p> <p>14 health care provider is supposed to check this box</p> <p>15 indicating there is not any of the impairments</p> <p>16 listed on the EHH form?</p> <p>17 A Yes.</p> <p>18 Q All right. Do you see the box directly</p> <p>19 below, a box labeled date of diagnosis?</p> <p>20 A Yes.</p> <p>21 Q Now, Ms. Nolan, I'll represent to you that</p> <p>22 the evidence in this case deals with hundreds of</p> <p>23 these EHH forms and in many of those EHH forms</p> <p>24 there is a handwritten date of the diagnosis of an</p> <p>25 asbestos-related disease or impairment. Is it</p>	<p>23</p> <p>1 Q And is it your understanding that the</p> <p>2 physician is supposed to sign this EHH form in the</p> <p>3 bottom boxes and also the date when they sign that</p> <p>4 form?</p> <p>5 A Yes.</p> <p>6 Q Ms. Nolan, in any of the materials that</p> <p>7 you reviewed did you see other copies of EHH forms</p> <p>8 or to the best of your knowledge is this a true</p> <p>9 and accurate copy of the EHH form that is to be</p> <p>10 used as a Medicare claim form for patients in</p> <p>11 Libby, Montana related to environmental health</p> <p>12 hazards?</p> <p>13 A This is the only form that is in our POMS.</p> <p>14 So this is what we would expect to be used.</p> <p>15 Q Okay. If we could go back to page 1 of</p> <p>16 Exhibit 76.</p> <p>17 Ms. Nolan, I'll be looking at the bottom</p> <p>18 of this form first, related to the EHH checklist</p> <p>19 and I'll read the section. Please tell me if I've</p> <p>20 read it correctly. And I understand that I'm</p> <p>21 going very slowly and deliberately and I apologize</p> <p>22 for that. As soon as we get through this section</p> <p>23 I'll have some more conversations -- I'll have</p> <p>24 some other questions that aren't as literal, okay?</p> <p>25 A Sure.</p>
<p>22</p> <p>1 your understanding that it is the provider or the</p> <p>2 physician who gives care to, in this instance,</p> <p>3 CARD patients that is to fill out the date of</p> <p>4 diagnosis on this EHH form?</p> <p>5 A Yes.</p> <p>6 Q Okay. And in terms of your review of any</p> <p>7 information about the POMS sections, or anything</p> <p>8 else, did you come across any information that</p> <p>9 said whether it would be appropriate for someone,</p> <p>10 other than a provider or physician, to fill out</p> <p>11 this date of diagnosis box on the form?</p> <p>12 A No.</p> <p>13 Q Okay. Then at the bottom of page, do you</p> <p>14 see the indications under Step 3 about identifying</p> <p>15 the presence in Lincoln County, Montana?</p> <p>16 A Yes.</p> <p>17 Q Is this section of the EHH form also</p> <p>18 supposed to be completed by the health care</p> <p>19 provider?</p> <p>20 A Yes.</p> <p>21 Q That section at the very bottom has a box</p> <p>22 with the printed name and the physician signature,</p> <p>23 along with the date. Do you see that section as</p> <p>24 well?</p> <p>25 A Yes.</p>	<p>24</p> <p>1 Q Okay. So under section 2, the EHH</p> <p>2 checklist, the purpose of the EHH checklist is to</p> <p>3 obtain information from the claimant's medical</p> <p>4 source, regarding the claimant's diagnosis and</p> <p>5 presence in Lincoln County, Montana.</p> <p>6 Did I read that sentence correctly?</p> <p>7 A Yes.</p> <p>8 Q I'll read the rest of the section in a</p> <p>9 moment. But first, does this section of the POMS</p> <p>10 manual identify the purpose of the EHH form in</p> <p>11 your mind?</p> <p>12 A Yes.</p> <p>13 Q Okay. And in terms of obtaining</p> <p>14 information from the claimant's medical source, is</p> <p>15 it SSA's expectation and understanding that the</p> <p>16 claimant's medical source or the provider or the</p> <p>17 physician will provide true, accurate, and</p> <p>18 complete information when filling out these EHH</p> <p>19 checklists and submitting them to the Social</p> <p>20 Security Administration?</p> <p>21 A Yes.</p> <p>22 Q All right. Continuing on, I'll read this</p> <p>23 part of the next sentence and then we'll go over</p> <p>24 to the next page.</p> <p>25 The claims representative, or CR, will use</p>

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Exhibit C-6

Conducted on June 8, 2023

<p>25</p> <p>1 the completed EHH checklist to determine if the --</p> <p>2 if we could go to the next page? I'm sorry, if we</p> <p>3 could scroll down to the next page, that would be</p> <p>4 helpful. Great. Continuing.</p> <p>5 If the claimant's condition meets the</p> <p>6 medical requirement. The EHH checklist may also</p> <p>7 provide evidence of presence in Lincoln County,</p> <p>8 Montana, parenthesis, for policy on using the EHH</p> <p>9 checklist is proof of presence in Lincoln County,</p> <p>10 Montana, see the following POMS sections. Also</p> <p>11 see images of the EHH checklist and cover notice</p> <p>12 in HI 00803.050 v.3 in this section.</p> <p>13 With the expectation of omitting some of</p> <p>14 those policy sections did I read this part of the</p> <p>15 EHH topic in the POMS correctly?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now, couple of background questions</p> <p>18 here. The POMS talk about the claims</p> <p>19 representative, or CR. Are you aware of who the</p> <p>20 CR or claims representative would be in this</p> <p>21 instance?</p> <p>22 A Yes.</p> <p>23 Q And who is that?</p> <p>24 A The individual we call a technician in the</p> <p>25 field office who would actually take an</p>	<p>27</p> <p>1 Q Okay. In terms of the steps that the</p> <p>2 Kalispell field office would take to obtain a</p> <p>3 completed checklist, are those steps included here</p> <p>4 directly in the POMS?</p> <p>5 A Yes.</p> <p>6 Q Okay. I think those are going to be</p> <p>7 obvious to the jury. They can read them. What</p> <p>8 I'd like to do now is just go down to section B,</p> <p>9 about the claimant's medical source. Do you see</p> <p>10 that in front of you?</p> <p>11 A Yes.</p> <p>12 Q All right. If we could scroll down a</p> <p>13 little bit? Thank you. Section B, the claimant's</p> <p>14 medical source will take the following actions to</p> <p>15 complete and return the EHH checklist.</p> <p>16 Did I read that correctly?</p> <p>17 A Yes.</p> <p>18 Q Okay. It says complete Step 2,</p> <p>19 identifying the asbestos-related conditions and</p> <p>20 its date of diagnosis. And Step 3, identify</p> <p>21 presence in Lincoln County, Montana.</p> <p>22 Did I read that correctly?</p> <p>23 A Yes.</p> <p>24 Q Okay. And to go through these other</p> <p>25 provisions; fill in the printed name, the</p>
<p>26</p> <p>1 application or claim.</p> <p>2 Q If you're aware, how does the claims</p> <p>3 representative determine if the claimant's</p> <p>4 condition meets the medical requirement?</p> <p>5 A According to the POMS they would use the</p> <p>6 checklist to make that determination.</p> <p>7 Q All right. And then, to the best of your</p> <p>8 knowledge, outside of reviewing the POMS, does the</p> <p>9 claims representative access or review any other</p> <p>10 information? For example, does the claims</p> <p>11 representative look at any medical records or look</p> <p>12 at any other sources of information not</p> <p>13 specifically referenced in the POMS?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Okay. I'll continue to read on this form</p> <p>16 and we'll see if that helps clarify some things.</p> <p>17 The form under section A reads, FO-872 takes the</p> <p>18 following actions to obtain a completing EHH</p> <p>19 checklist.</p> <p>20 Ms. Nolan, what is FO-872?</p> <p>21 A That is a field office number.</p> <p>22 Q Okay. And to the best of your</p> <p>23 understanding is FO-872 the field office number</p> <p>24 for the field office in Kalispell, Montana?</p> <p>25 A Yes, that's identified in POMS.</p>	<p>28</p> <p>1 physician's signature, and date.</p> <p>2 Did I read that correctly?</p> <p>3 A Yes.</p> <p>4 Q Okay. Return it by fax to the number</p> <p>5 provided on the cover notice or mail it to the</p> <p>6 Kalispell field office, located at 275 Corporate</p> <p>7 Drive, Ashley Square Mall, Suite D, Kalispell,</p> <p>8 Montana 59901.</p> <p>9 Did I read that part correctly?</p> <p>10 A Yes.</p> <p>11 Q Okay. Note, the medical source does not</p> <p>12 need to provide the supporting medical evidence.</p> <p>13 Did I read that right?</p> <p>14 A Yes.</p> <p>15 Q Couple questions here, just so that we're</p> <p>16 on the same page. Is the claimant's medical</p> <p>17 source the health care provider who saw the CARD</p> <p>18 patient in this instance and provided the</p> <p>19 diagnosis and date of diagnosis?</p> <p>20 A The Medicare -- I'm sorry, the medical</p> <p>21 provider should be the individual that makes the</p> <p>22 diagnosis, yes.</p> <p>23 Q All right. And here the note saying that</p> <p>24 the medical source or the care provider does not</p> <p>25 need to provide the supporting medical evidence.</p>

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Exhibit C-7

Conducted on June 8, 2023

<p>29</p> <p>1 So is it -- is it your understanding, from</p> <p>2 the POMS, that the medical source, in this</p> <p>3 instance the CARD physician, doesn't need to fax</p> <p>4 or mail any of the patient's medical records,</p> <p>5 including CT scans or B reader checklists, or</p> <p>6 anything like that to the field office?</p> <p>7 A Correct.</p> <p>8 Q Okay. If we can go to the next page of</p> <p>9 Exhibit 76, that would be helpful. Thanks.</p> <p>10 So next page here starts off, field office</p> <p>11 872 will take the following actions to store the</p> <p>12 completed EHH checklists.</p> <p>13 Ms. Nolan, just generally, what is your</p> <p>14 understanding of how the Social Security</p> <p>15 Administration office in Kalispell would store EHH</p> <p>16 checklists?</p> <p>17 A It would -- it should be according to</p> <p>18 what's in the POMS. They've taken the information</p> <p>19 and reviewing it, making sure that it is stored in</p> <p>20 what's called an electronic folder.</p> <p>21 Q And in terms of those EHH checklists, just</p> <p>22 generally, Ms. Nolan, is it your understanding and</p> <p>23 is it the policy of the Social Security</p> <p>24 Administration that if a patient does not have a</p> <p>25 diagnosis of an asbestos-related condition caused</p>	<p>31</p> <p>1 provision of the Affordable Care Act that</p> <p>2 addresses environmental health hazard eligibility</p> <p>3 for Medicare?</p> <p>4 A Yes.</p> <p>5 Q And is that the section of law that you</p> <p>6 reviewed in preparation for your 30(b)(6)</p> <p>7 deposition today?</p> <p>8 A Yes.</p> <p>9 Q Okay. I'd like to read Section A,</p> <p>10 background for EHH Medicare. Just please tell me</p> <p>11 if I've read it correctly, okay?</p> <p>12 A Yes.</p> <p>13 Q Section 10323 of the Affordable Care Act</p> <p>14 added Section 1881A of the SSA Act, effective</p> <p>15 March 23, 2010. This section extends entitlement</p> <p>16 to Medicare hospital insurance, HI, and</p> <p>17 eligibility to enroll in supplementary medical</p> <p>18 insurance, SMI, to certain individuals exposed to</p> <p>19 environmental health hazards, EHH, and diagnosed</p> <p>20 with a medical condition caused by such exposure.</p> <p>21 Did I read that correctly?</p> <p>22 A Yes.</p> <p>23 Q Okay. I'll read the next section.</p> <p>24 Currently, the only individuals eligible for</p> <p>25 Medicare under this provision are those who were</p>
<p>30</p> <p>1 by exposure to Libby asbestos they are not</p> <p>2 eligible for Medicare?</p> <p>3 A Correct.</p> <p>4 Q Okay. Now if we could turn to Exhibit 75,</p> <p>5 please, that would be helpful.</p> <p>6 As we're are getting Exhibit 75 on the</p> <p>7 screen, Ms. Nolan, is section HI 00803.001,</p> <p>8 Hospital Insurance Entitlement for Individuals</p> <p>9 Exposed to Environmental Health Hazards, EHH, also</p> <p>10 a section of policies that you reviewed in</p> <p>11 preparation for your testimony today?</p> <p>12 (Thereupon, Exhibit 75 was marked for</p> <p>13 identification.)</p> <p>14 A Yes.</p> <p>15 Q Okay. This section begins with a</p> <p>16 bold-faced heading, citations. Do you see that?</p> <p>17 A Under section A or --</p> <p>18 Q Yes.</p> <p>19 A -- on the top?</p> <p>20 Q Yes, at the very top and in section.</p> <p>21 A The citation, yes.</p> <p>22 Q Okay. And what is the citation after the</p> <p>23 bold-faced heading here?</p> <p>24 A Section 1881A, the Social Security Act.</p> <p>25 Q Ms. Nolan, is Section 1881A of the SSA the</p>	<p>32</p> <p>1 present in Lincoln County, Montana and have an</p> <p>2 asbestos-related disease diagnosis.</p> <p>3 Did I read that section correctly?</p> <p>4 A Yes.</p> <p>5 Q April 2010 is the earliest possible</p> <p>6 effective date of entitlement based on a March</p> <p>7 2010 filing date.</p> <p>8 Did I read that correctly?</p> <p>9 A Yes.</p> <p>10 Q Okay. Ms. Nolan, just generally, is it</p> <p>11 your understanding that this section of the POMS</p> <p>12 took into account Section 1881A of the SSA Act, or</p> <p>13 the EHH provisions of the Affordable Care Act, and</p> <p>14 put them into a policy to be implemented by Social</p> <p>15 Security Administration staff?</p> <p>16 A May I rephrase your question to make sure</p> <p>17 I understand?</p> <p>18 Q Please.</p> <p>19 A Did -- was the SSA Act -- 1881A of the SSA</p> <p>20 Act, used in order to make or create the POMS?</p> <p>21 Q Yes.</p> <p>22 A Yes.</p> <p>23 Q All right. And thank you for that</p> <p>24 clarification.</p> <p>25 In terms of this section of the POMS, does</p>

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Exhibit C-8

Conducted on June 8, 2023

<p>33</p> <p>1 this section of the POMS also set forth that in 2 order to receive Medicare benefits. In order to 3 be eligible for Medicare benefits, a patient or an 4 individual must be diagnosed with an 5 asbestos-related disease? 6 A Yes. 7 Q Okay. And I think the exact word in the 8 first clause is certain individuals must -- 9 exposed to environmental health hazards and 10 diagnosed with a medical condition caused by such 11 exposure. 12 Is that your understanding as well as that 13 just mentioned for the requirements for 14 eligibility for Medicare benefits? 15 A Correct. 16 Q All right. So Ms. Nolan, in terms of the 17 information that you reviewed about the Affordable 18 Care Act or the Program Operations Manual or the 19 EHH forms themselves, based on your review of 20 evidence and material, is there any exception that 21 you're aware of that would allow a patient to 22 receive Medicare benefits, if only a B-read 23 checklist form was submitted to the Kalispell 24 field office, not a signed and dated EHH form with 25 the certification that the patient had been</p>	<p>35</p> <p>1 series of questions here and you may or may not 2 know the factual basis for them. And that's just 3 fine. I'll try to be as clear as I can. 4 Ms. Nolan, are you aware of what a 5 radiologist, known as a B reader, is? 6 A I have a surface level understanding of a 7 B reader. 8 Q Okay. And it's not my objective nor my 9 intent to ask you test questions, so to speak, or 10 quiz you in front of a jury in a way that is 11 embarrassing at all. But if you could share with 12 me what your surface understanding of what a B 13 reader is, that will be helpful. 14 A Sure. A B reader, to my understanding, is 15 a physician who reads chest x-rays of individuals. 16 That's probably the extent of my knowledge. 17 Q Okay. And Ms. Nolan, my question is this, 18 is there a pathway to Medicare eligibility if 19 physicians or a provider were just to send in a B 20 reader checklist form without an EHH checklist? 21 A Not to my knowledge. The POMS state to 22 send in a checklist and all the other criteria 23 that I mentioned earlier, so -- 24 Q Okay. Yeah. And what I'm trying to get 25 at here is it sounds like, to your knowledge,</p>
<p>34</p> <p>1 diagnosed with an asbestos-related disease? 2 MR. BECHTOLD: Leading. 3 Q I'll go ahead and just rephrase. I'll 4 concede that that was, at least, a very long 5 question. 6 Ms. Nolan, can a patient be deemed 7 eligible for Medicare unless an EHH form is filled 8 out and submitted by the provider? 9 A No, the rules are EHH form signed by the 10 provider, file an application, and live in Libby, 11 Montana for at least six months. 12 Q All right. So if a provider were to 13 submit or send into the Social Security field 14 office in Kalispell any other pieces of paper, 15 short of a signed certified and dated EHH form, 16 could that patient get Medicare eligibility? 17 A They should not, based on EHH, according 18 to the POMS. 19 Q All right. Are you aware of any exception 20 to that rule that would allow a patient to become 21 Medicare eligible under the EHH program, aside 22 from having an EHH form submitted to the Kalispell 23 field office? 24 A Not to my knowledge. 25 Q Okay. Ms. Nolan, I'm going to ask a</p>	<p>36</p> <p>1 there isn't another route to EHH Medicare 2 eligibility, other than the doctor who diagnosed 3 the patient, sending in a signed, dated EHH form 4 with a diagnosed impairment listed on that EHH 5 form. 6 Is that your understanding also? 7 A Yes. 8 Q Okay. In terms of the Social Security 9 Administration office's expectations for that EHH 10 form, is the Social Security Administration 11 relying on the provider to determine whether 12 there's a diagnosis of a asbestos-related 13 condition or not? 14 A Yes. 15 Q And so if the provider, in this case the 16 CARD physician, asserts on the EHH form that there 17 is a diagnosis and they submit that signed, dated 18 EHH certification, does the Social Security 19 Administration have any follow-up questions or do 20 any other additional inquiry at the Kalispell 21 field office, to the best of your knowledge? 22 A It's possible that they could -- 23 Q Okay. 24 A -- do follow up. I wouldn't be able to go 25 into details as to why, if there was a question</p>

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<p>37</p> <p>1 about, you know, the date or something like that.</p> <p>2 So it's possible that they could do follow up.</p> <p>3 Q Sure. And I think we have some e-mails</p> <p>4 like that in this case. My understanding is</p> <p>5 you're not a factual witness so I won't be asking</p> <p>6 you to address that topic.</p> <p>7 But is the general practice between the</p> <p>8 Social Security Administration field office and</p> <p>9 the CARD clinic, as a provider, is it generally</p> <p>10 the practice of SSA just to look for just the EHH</p> <p>11 form itself to determine whether or not the CARD</p> <p>12 patient has a diagnosis for asbestos -- related</p> <p>13 disease?</p> <p>14 A According to the POMS, that's what they</p> <p>15 should be looking for.</p> <p>16 Q All right. On this issue of B readers, if</p> <p>17 we could go back to Exhibit 76, page 4, please?</p> <p>18 Ms. Nolan, I'll represent to you that</p> <p>19 Exhibit 76, page 4 shows the EHH form that's in</p> <p>20 the POMS manual that we were looking at earlier,</p> <p>21 okay?</p> <p>22 A Yes.</p> <p>23 Q All right. So in terms of the boxes here,</p> <p>24 under minimum medical evidence required -- I think</p> <p>25 we've already covered the interpretation by a B</p>	<p>39</p> <p>1 necessary.</p> <p>2 Q All right. So without that CARD provider</p> <p>3 saying that there was a diagnosis, in any case,</p> <p>4 regardless of whether it was apparently based on a</p> <p>5 B-read or a CT scan or a chest x-ray from a normal</p> <p>6 radiologist, is it true that without the</p> <p>7 physician's certification that an asbestos-related</p> <p>8 disease diagnosis exists, the patient wouldn't be</p> <p>9 able to get Medicare?</p> <p>10 A Correct. They would need to have the</p> <p>11 document that EHH signed, certified stated they</p> <p>12 had an asbestos-related disease to qualify for EHH</p> <p>13 Medicare.</p> <p>14 Q Okay. So without a diagnosis from a CARD</p> <p>15 provider signed, dated, and submitted by the CARD</p> <p>16 clinic to the Social Security Administration, a</p> <p>17 patient could not be and would not be deemed</p> <p>18 eligible for Medicare?</p> <p>19 MR. BECHTOLD: Leading.</p> <p>20 Q Let me rephrase. What's your</p> <p>21 understanding of whether a CARD physician's</p> <p>22 certification of a diagnosis is required in order</p> <p>23 to get Medicare eligibility?</p> <p>24 A To get Medicare eligibility for EHH, a</p> <p>25 signed -- a signed checklist acknowledging the</p>
<p>38</p> <p>1 reader qualified physician of plain chest x-ray or</p> <p>2 interpretation of computed tomographic radiograph</p> <p>3 of the chest-ray by a qualified physician.</p> <p>4 Do you recall this section of the form?</p> <p>5 A Yes.</p> <p>6 Q Okay. In terms of any inquiry by the</p> <p>7 Social Security Administration about whether there</p> <p>8 was a B reader that indicated a finding of an</p> <p>9 abnormality or a CT scan read by a qualified</p> <p>10 physician, are you aware of whether or not the</p> <p>11 Social Security Administration field office</p> <p>12 conducts any further inquiry with the CARD</p> <p>13 provider on this topic, other than just looking to</p> <p>14 see if the form has been filled out correctly with</p> <p>15 all the required fields addressed?</p> <p>16 A I'm not aware.</p> <p>17 Q Okay. In terms of whether a B-read,</p> <p>18 alone, would qualify a patient for Medicare</p> <p>19 eligibility in the absence of a physician or a</p> <p>20 provider certifying that patient had a diagnosis</p> <p>21 of an asbestos-related disease, is it your</p> <p>22 understanding that a B-read, alone, would qualify</p> <p>23 a patient for Medicare benefits without the</p> <p>24 physician's certification of a diagnosis?</p> <p>25 A A certification of the diagnosis would be</p>	<p>40</p> <p>1 diagnosis would need to be sent forward.</p> <p>2 Q Okay. And that certification, that EHH</p> <p>3 form, would be sent forward to the Social Security</p> <p>4 Administration field office by the CARD clinic in</p> <p>5 this case?</p> <p>6 A Correct.</p> <p>7 Q Okay. Ms. Nolan, what I'd like to do --</p> <p>8 we've been going for about an hour -- is take a</p> <p>9 short break. Would ten minutes be acceptable to</p> <p>10 everybody?</p> <p>11 A That's fine.</p> <p>12 Q All right. Thank you, ma'am. We'll be</p> <p>13 back on the record in ten minutes.</p> <p>14 THE VIDEOGRAPHER: We're going off the</p> <p>15 record. The time is 10:54.</p> <p>16 (Thereupon, a recess was had.)</p> <p>17 THE VIDEOGRAPHER: We're back on record.</p> <p>18 The time is 11:03.</p> <p>19 BY MR. DUERK:</p> <p>20 Q All right. Ms. Nolan, thanks for that</p> <p>21 short break. I'll see if I can trim this up as</p> <p>22 much as possible here.</p> <p>23 Before we went on the break we were</p> <p>24 talking about B readers and your knowledge about B</p> <p>25 readers. Again, I don't mean to quiz you or give</p>

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<p>41</p> <p>1 you a high school examination in front of a jury</p> <p>2 here, but in terms of B readers, I'd like to</p> <p>3 question whether you were aware of a couple of</p> <p>4 different issues that have come up related to B</p> <p>5 readers in this case.</p> <p>6 First, ma'am, were you aware that</p> <p>7 according to the radiologist B readers themselves,</p> <p>8 B readers do not diagnose patients?</p> <p>9 MR. BECHTOLD: Foundation, leading.</p> <p>10 A I was not clear.</p> <p>11 Q Okay. In terms of any communications you</p> <p>12 reviewed or any information at all from CARD, did</p> <p>13 you review any information that indicated that</p> <p>14 CARD itself does not consider radiologists or B</p> <p>15 readers as diagnosing physicians?</p> <p>16 MR. BECHTOLD: Foundation, leading.</p> <p>17 Q And you were unaware of it, that's okay,</p> <p>18 Ms. Nolan. I'm just trying to check if you</p> <p>19 reviewed any information that indicated that even</p> <p>20 CARD considers B reading radiologists as not</p> <p>21 diagnosing physicians?</p> <p>22 MR. BECHTOLD: Foundation, leading.</p> <p>23 A You want me to answer --</p> <p>24 Q Yes.</p> <p>25 A -- still? I'm not aware.</p>	<p>43</p> <p>1 to the present day, if an EHH form were submitted</p> <p>2 for a patient who did not have a diagnosis of</p> <p>3 asbestos-related disease and the Social Security</p> <p>4 Administration somehow became aware of that, would</p> <p>5 that patient be Medicare eligible?</p> <p>6 A Can you repeat the question, please?</p> <p>7 Q Sure. And maybe I'll try rephrase it and</p> <p>8 make it a little simpler. If a -- if an EHH form</p> <p>9 was submitted by a provider and whether it was</p> <p>10 information on the EHH form itself or</p> <p>11 communication from the provider over the phone,</p> <p>12 regardless of the form of that communication, if</p> <p>13 the Social Security Administration learned that</p> <p>14 that patient did not actually have a diagnosis of</p> <p>15 asbestos-related disease, would that patient be</p> <p>16 eligible for Medicare?</p> <p>17 A I'm sorry. Are you saying the EHH form</p> <p>18 was signed stating that the patient had an</p> <p>19 asbestos-related disease --</p> <p>20 Q I am saying -- no, go ahead, ask your</p> <p>21 question, sorry.</p> <p>22 A No, no. And then later learned that the</p> <p>23 individual did not have asbestos-related disease?</p> <p>24 Q Yes.</p> <p>25 A What -- okay.</p>
<p>42</p> <p>1 Q Okay. That makes sense. In terms of any</p> <p>2 of these POMS policies, based on your review of</p> <p>3 the evidence and information in this case, have</p> <p>4 any of these POMS policies changed since the time</p> <p>5 they were implemented until today's date?</p> <p>6 A There's been a recent change to change</p> <p>7 gender specific language to gender neutral</p> <p>8 language. It's been the only change since</p> <p>9 inception.</p> <p>10 Q All right. And in terms of how the POMS</p> <p>11 has been administered from inception until today's</p> <p>12 date, is it still a requirement of the Social</p> <p>13 Security Administration field office in Kalispell,</p> <p>14 according to these POMS sections, that for</p> <p>15 Medicare eligibility a patient must have a</p> <p>16 diagnosis of an asbestos-related disease?</p> <p>17 A Yes.</p> <p>18 Q All right. And in terms of that specific</p> <p>19 requirement, at any time based on your review of</p> <p>20 the information available, has the Social Security</p> <p>21 Administration ever made any changes in that</p> <p>22 particular provision of the POMS?</p> <p>23 A No.</p> <p>24 Q So Ms. Nolan, according to the information</p> <p>25 that you reviewed from the very beginning, in 2010</p>	<p>44</p> <p>1 Q What would happen there?</p> <p>2 A The case may be reviewed if the field</p> <p>3 office had questions about the Medicare coverage,</p> <p>4 whether Medicare entitlement should be provided or</p> <p>5 not. So the case could be reviewed.</p> <p>6 Q Okay. And -- and if that review -- if the</p> <p>7 final analysis revealed that the patient did not</p> <p>8 have a diagnosis of an asbestos-related disease,</p> <p>9 would that patient be eligible for Medicare?</p> <p>10 A The individual should not be eligible for</p> <p>11 Medicare. I'm unaware -- what you're explaining,</p> <p>12 that example, I'm not aware that that has</p> <p>13 happened.</p> <p>14 Q Right.</p> <p>15 A But that individual would not be eligible</p> <p>16 for Medicare.</p> <p>17 Q All right. And is it fair to say that</p> <p>18 that was the initial policy of Social Security</p> <p>19 Administration, that has been the policy of the</p> <p>20 Social Security Administration, and that is still</p> <p>21 the policy of the Social Security Administration</p> <p>22 today? That if you don't have a diagnosis of an</p> <p>23 asbestos-related disease, you do not get Medicare?</p> <p>24 A Correct.</p> <p>25 Q Okay. Ms. Nolan, the subpoena in this --</p>

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Exhibit C-11

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<p>45</p> <p>1 in this case had a number of different paragraphs 2 related to, I think -- what I'll represent are 3 related issues. Just so that we're clear though, 4 I'd like to go through each of the paragraphs in 5 subpoena that you reviewed to make sure that there 6 aren't any remaining unanswered questions, okay? 7 A Yes. 8 Q All right. So it's my understanding that 9 paragraph 1 of the subpoena deals with the POMS 10 section HI 00803.050, Developing Medical 11 Requirements for Entitlement to EHH Medicare. 12 The Social Security Administration's 13 designated deponent must define and explain what 14 the certain diagnostic methods are that are 15 accepted by the Social Security Administration in 16 that section of the POMS to qualify a person for 17 EHH Medicare and delineate and explain how a 18 person can be diagnosed with an asbestos-related 19 disease, ARD, that is accepted by the Social 20 Security Administration to qualify that person for 21 EHH Medicare. 22 Ms. Nolan, what would your response be to 23 paragraph 1 of the subpoena, if we haven't covered 24 it already? 25 A We would actually -- based on what the</p>	<p>47</p> <p>1 Q Okay. And what are some of the other 2 diagnostic methods that are recognized -- 3 A If you go -- sorry. 4 Q That would be recognized by the SSA? 5 A Apologies. Yes, if you would go further 6 down, established -- this is the third column for 7 mesothelioma established by pathology examination 8 or biopsy tissue or cytology from -- and I'm going 9 to botch that word. 10 Q Bronchoalveolar, is that -- sure. Lavage. 11 Okay. Are there any other diagnostic methods that 12 are recognized by the Social Security 13 Administration? 14 A I don't know that there are any others 15 listed here. 16 Q Okay. And again, for purposes of today's 17 examination, I'm just primarily focusing on the 18 minimum medical evidence required for asbestosis 19 and pleural thickening or pleural plaques, okay? 20 So Ms. Nolan, if you could share with me 21 any information that you found in your review of 22 the policies, or any other source of information, 23 about this issue of certain diagnostic methods. 24 In terms of the diagnostic methodology or the 25 diagnostic methods, we talked earlier about</p>
<p>46</p> <p>1 Affordable Care Act states, 1881A, the Affordable 2 Care Act, we would use those definitions to 3 determine what a qualified -- and I'm sorry. I 4 lost your terms. 5 Q Sure. Certain diagnostic methods. 6 A So, we would list what that is from the 7 Affordable Care Act. 8 Q Okay. And then, in terms of those certain 9 diagnostic methods lifted from the Affordable Care 10 Act, what are the accepted diagnostic methods in 11 the Social Security Administration's view? 12 A It would be those items that are listed on 13 the EHH checklist. 14 Q Okay. And so in terms of the EHH 15 checklist -- again, if we could go to Exhibit 76, 16 page 4? Okay. Are the certain diagnostic methods 17 included on this EHH checklist? 18 A I believe they are, yes. 19 Q Okay. And what are those diagnostic 20 methods? 21 A Interpretation by B reader, qualified 22 physician of a plain chest x-ray, or 23 interpretation of a computed tomographic 24 radiograph of a chest by a qualified physician 25 would be one.</p>	<p>48</p> <p>1 whether a B-read form alone could be submitted to 2 the Social Security Administration, do you recall 3 that part of your testimony? 4 A Yes. 5 Q Okay. So regardless of what diagnostic 6 method is used or forms the basis for a diagnosis, 7 is it your understanding that the CARD provider or 8 the CARD physician is still the physician that 9 determines whether there is a diagnosis for that 10 individual CARD patient? 11 A It should be the individual signing the 12 form at the bottom of the EHH checklist. 13 Q Okay. And regardless of what diagnostic 14 method is used, is it still the individual who 15 signs the EHH form who is responsible for 16 certifying that a diagnosis exists? 17 A Yes. 18 Q Okay. So in this case, unless the CARD 19 physician or the CARD provider signed the EHH form 20 certifying that there is a diagnosis for that 21 patient, the SSA doesn't conduct any inquiry about 22 the diagnostic methodology outside of the four 23 corners in this EHH form; is that fair? 24 A To my knowledge, that's correct. 25 Q Okay. And in terms of your review of any</p>

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Exhibit C-12

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<p>49</p> <p>1 information about the certain diagnostic methods</p> <p>2 referenced in the subpoena, did you find any other</p> <p>3 information, any other facts, any other policy</p> <p>4 considerations about the certain diagnostic</p> <p>5 methods listed in the POMS here that was relevant</p> <p>6 in your inquiry?</p> <p>7 A No.</p> <p>8 Q Okay. Is there anything more to discuss</p> <p>9 about paragraph 1 of the subpoena when it comes to</p> <p>10 certain diagnostic methods?</p> <p>11 A No.</p> <p>12 Q Okay. If -- we'll -- we'll go on to</p> <p>13 paragraph 2 of the subpoena. This also is about</p> <p>14 the POMS section HI 00803.050. That section</p> <p>15 includes an Environmental Health Hazards</p> <p>16 Checklist. The Social Security Administration's</p> <p>17 designated deponent must define the minimum</p> <p>18 medical evidence required accepted by the Social</p> <p>19 Security Administration to qualify a person for</p> <p>20 EHH Medicare.</p> <p>21 Ms. Nolan, is there anything further to</p> <p>22 discuss on that topic?</p> <p>23 A No.</p> <p>24 Q Okay. Paragraph 3, the Social Security</p> <p>25 Administration's POMS section 00803.050,</p>	<p>51</p> <p>1 the EHH checklist.</p> <p>2 What is the SSA's definition of a</p> <p>3 qualified physician related to the EHH form?</p> <p>4 A Again, we would have taken that</p> <p>5 information from the Affordable Care Act, 1881A.</p> <p>6 Q Okay. And so what would the SSA's</p> <p>7 definition of a qualified physician be, just</p> <p>8 generally?</p> <p>9 A I don't know that SSA has defined it in</p> <p>10 this term.</p> <p>11 Q Okay. Is there anything else to add in</p> <p>12 response to paragraph 4 of the subpoena?</p> <p>13 A No.</p> <p>14 Q Okay. Paragraph 5 talks about the other</p> <p>15 section of the POMS, HI 00803.001, Hospital</p> <p>16 Insurance Entitlement for Individuals Exposed to</p> <p>17 Environmental Health Hazards. I think we've</p> <p>18 covered this but if we could please go to Exhibit</p> <p>19 75, page 1?</p> <p>20 All right. Do you see Exhibit 75, page 1</p> <p>21 in front of you with the citation Section 1881A of</p> <p>22 the Social Security Act in front of you?</p> <p>23 A Yes.</p> <p>24 Q All right. Okay. I'm looking for the</p> <p>25 questions here. Here we go. The Social Security</p>
<p>50</p> <p>1 Developing Medical Requirement for Entitlement to</p> <p>2 EHH Medicare includes an Environmental Health</p> <p>3 Hazards Checklist. The Social Security</p> <p>4 Administration's designated deponent must provide</p> <p>5 the Social Security Administration's definition of</p> <p>6 a B reader qualified physician for interpretations</p> <p>7 of plain chest x-rays as stated on the</p> <p>8 Environmental Health Hazards Checklist.</p> <p>9 Aside from the definition that you shared</p> <p>10 of a B reader earlier, do you have any other</p> <p>11 definition from the Social Security Administration</p> <p>12 of a B reader qualified physician?</p> <p>13 A No.</p> <p>14 Q Is there anything further discuss on</p> <p>15 paragraph 2 of the subpoena?</p> <p>16 A No.</p> <p>17 Q Okay. Next paragraph. The Social</p> <p>18 Security Administration's Operation Manual System</p> <p>19 for the same section related to the Environmental</p> <p>20 Health Hazards Checklist. It continues. The</p> <p>21 Social Security Administration's designated</p> <p>22 deponent must provide the Social Security</p> <p>23 Administration's definition of a qualified</p> <p>24 physician for interpretations of computed</p> <p>25 tomographic radiographs of the chest, as stated on</p>	<p>52</p> <p>1 Administration's designated deponent must define</p> <p>2 and explain the eligibility requirements for HI,</p> <p>3 or Hospital Insurance, and SMI for certain</p> <p>4 individual exposed to environmental health</p> <p>5 hazards, EHH, and diagnosed with a medical</p> <p>6 condition caused by such exposure stated in this</p> <p>7 POMS section.</p> <p>8 Ms. Nolan, have you defined and explained</p> <p>9 the eligibility requirements under this section of</p> <p>10 the POMS?</p> <p>11 A Yes.</p> <p>12 Q Okay. Do you have anything else to add on</p> <p>13 that topic?</p> <p>14 A No.</p> <p>15 Q Okay. It also asks the Social Security</p> <p>16 Administration's designated deponent must define</p> <p>17 and explain how individuals obtain an</p> <p>18 asbestos-related disease diagnosis stated in POMS</p> <p>19 section 803.001.</p> <p>20 Have we covered that topic to the best of</p> <p>21 your knowledge?</p> <p>22 A Yes.</p> <p>23 Q Okay. The next question. The Social</p> <p>24 Security Administration's designated deponent must</p> <p>25 define and explain what the certain diagnostic</p>

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<p>1 methods are that are accepted by the Social 2 Security Administration in section HI 00803.001. 3 Have we covered what the certain 4 diagnostic methods are in -- to the best of your 5 knowledge? 6 A Yes. 7 Q Okay. In order to qualify a person for 8 EHH Medicare -- the deponent must delineate and 9 explain how a person can be diagnosed with a 10 asbestos-related disease that is accepted by the 11 Social Security Administration to qualify that 12 person for EHH Medicare. 13 Ms. Nolan, have we addressed that topic to 14 the best of your knowledge? 15 A Yes. 16 Q Okay. The next section here -- or the 17 next question, POMS 803.001, so we're still on 18 this same section. This section provides three 19 examples. So if we could go to the next page 20 here? If we could continue down, great. So if -- 21 if we could go just a little bit higher to get to 22 the heading. I'll read it and we'll cover the 23 waterfront here. Do you see the section 3, 24 effective date of HI coverage? 25 A Yes.</p>	53	<p>1 and explain what the diagnostic methods specified 2 in the law are that are accepted by the Social 3 Security Administration in the POMS to qualify a 4 person for EHH Medicare. 5 The Social Security Administration's 6 designated deponent must define the law to which 7 HI 00803 refers and explain the procedures the SSA 8 has followed to implement this law. 9 Ms. Nolan, what would your response be to 10 those specific questions, if you haven't addressed 11 them already? 12 A So I apologize, I'll get these out of 13 order likely. But this section refers to the 14 Affordable Care Act. 15 Q Okay. 16 A That's the law that -- I think we covered, 17 the asbestos-related diagnosis when we went over 18 the check sheet, the checklist. 19 Q Okay. 20 A And I apologize, the first question was? 21 Q What is your response to these questions 22 in the subpoena, if you haven't already addressed 23 them? 24 A I believe I addressed them. 25 Q Okay. And in terms of these three</p>	55
<p>1 Q I'll read this. Please tell me if I've 2 read it correctly. 3 If the claimant meets both the presence 4 and medical requirements as of the date of filing, 5 DOF, or by the end of the month of filing. HI, or 6 Hospital Insurance, will be effective the first 7 day of the month following the month of filing. 8 If a physician has not diagnosed the claimant with 9 a qualifying asbestos-related disease as of the 10 date of filing or by the end of the month of 11 filing, the effective date of HI, Hospital 12 Insurance, will be the first day of the month 13 after the month the claimant is diagnosed with a 14 qualifying asbestos-related disease if the 15 claimant also meets the presence requirements in 16 HI 00803.001. B1, second bullet in this section. 17 Did I read that correctly? 18 A Yes. 19 Q Okay. Ms. Nolan, does it appear to you 20 that the three examples below here relate to the 21 effective date of hospital insurance coverage? 22 A Yes. 23 Q Okay. The -- the specific question in 24 this subpoena says that the Social Security 25 Administration's designated deponent must define</p>	54	<p>1 examples, if you just scan over the first two and 2 I'll show you the third one. But is there 3 anything else that's relevant in your analysis of 4 these examples to the main question about the law 5 or the diagnostic method specified in the law that 6 we haven't already covered? 7 A I don't believe so, no. 8 Q Okay. Let me make sure that you've seen 9 example 3, okay? If we could scroll down, please, 10 to the next page. 11 A I think we've addressed them. 12 Q Okay. Paragraph 9 of the subpoena asks 13 the Social Security Administration's designated 14 deponent must define and explain what the certain 15 diagnostic methods are that are accepted by the 16 Social Security Administration in HI 00803.050 to 17 qualify a person for EHH Medicare and delineate 18 and explain how a person can be diagnosed with an 19 asbestos-related disease that is accepted to the 20 Social Security Administration to qualify that 21 person for EHH Medicare. 22 Ms. Nolan, do you have any response to 23 paragraph 9 of the subpoena that we haven't 24 already covered? 25 A No.</p>	56

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Exhibit C-14

Conducted on June 8, 2023

<p>57</p> <p>1 Q All right. I'll -- I'll keep going</p> <p>2 through these to make sure that we've buttoned</p> <p>3 everything up. But paragraph 10 asks that the</p> <p>4 Social Security Administration's designated</p> <p>5 deponent must define the minimum medical evidence</p> <p>6 required accepted by the Social Security</p> <p>7 Administration to qualify a person for EHH</p> <p>8 Medicare.</p> <p>9 Have we covered that topic to the best of</p> <p>10 your knowledge?</p> <p>11 A Yes.</p> <p>12 Q Okay. Paragraph 11 references POMS</p> <p>13 section 00803.050. The Social Security</p> <p>14 Administration's designated deponent must provide</p> <p>15 the Social Security Administration's definition of</p> <p>16 a B reader qualified physician for interpretations</p> <p>17 of plain chest x-rays, as stated on the</p> <p>18 Environmental Health Hazards Checklist.</p> <p>19 Ms. Nolan, have we covered that topic to</p> <p>20 completion as far as you're concerned?</p> <p>21 A Yes.</p> <p>22 Q Okay. Paragraph 12 also references POMS</p> <p>23 section 00803.050. It says the Social Security</p> <p>24 Administration's designated deponent must provide</p> <p>25 the Social Security Administration's definition of</p>	<p>59</p> <p>1 want to make sure no stone is unturned, okay?</p> <p>2 A Yes.</p> <p>3 Q All right. So here we're looking at the</p> <p>4 minimum medical evidence required column, the</p> <p>5 interpretation by a B reader. And then, down at</p> <p>6 the bottom of the form, the date of diagnosis. So</p> <p>7 in terms of what's on this EHH form, is the Social</p> <p>8 Security Administration concerned with when the</p> <p>9 B-read, chest x-ray, or any of CT scans were</p> <p>10 interpreted by the radiologist or -- if we can go</p> <p>11 to the bottom of this form -- is the SSA more</p> <p>12 concerned with the date that the provider, the</p> <p>13 physician -- in this case, the CARD doctor --</p> <p>14 actually diagnosed the patient?</p> <p>15 MR. BECHTOLD: Leading.</p> <p>16 Q Let me rephrase. Ms. Nolan, in terms of</p> <p>17 the date of diagnosis that's filled out here by</p> <p>18 the CARD provider, in -- in the SSA's view, is</p> <p>19 that supposed to be the date that the provider</p> <p>20 considered the patient or diagnosed the patient</p> <p>21 with an asbestos-related disease?</p> <p>22 A Yes.</p> <p>23 Q Okay. And in terms of the information</p> <p>24 that the SSA has or that the SSA considers</p> <p>25 important, does the SSA make any kind of inquiry</p>
<p>58</p> <p>1 a qualified physician for interpretations of</p> <p>2 computed tomographic radiographs of the chest as</p> <p>3 stated on the Environmental Health Hazards</p> <p>4 Checklist.</p> <p>5 Ms. Nolan, have we covered that topic?</p> <p>6 A Yes.</p> <p>7 Q Anything to add to that topic in your</p> <p>8 view?</p> <p>9 A No.</p> <p>10 Q Okay. Paragraph 13, also referencing POMS</p> <p>11 00803.050. The Social Security Administration's</p> <p>12 designated deponent must provide the SSA's</p> <p>13 definition of the date of diagnosis when the</p> <p>14 minimum medical evidence required is a</p> <p>15 interpretation by a B reader qualified physician</p> <p>16 of a plain x-ray, as stated on the Environmental</p> <p>17 Health Hazards Checklist.</p> <p>18 Is there anything else that you feel you</p> <p>19 have to offer on that topic?</p> <p>20 A No.</p> <p>21 Q Okay. And just so we're clear, if we</p> <p>22 could go back to Exhibit 76, page 4, we'll look at</p> <p>23 the EHH checklist itself. And Ms. Nolan, I</p> <p>24 apologize for, kind of, the exhaustive nature of</p> <p>25 going through paragraph by paragraph here, I just</p>	<p>60</p> <p>1 into when the radiographic scan was taken, the</p> <p>2 radiographic study, the chest x-ray, or CT scan?</p> <p>3 A I'm sorry, are you asking, do we --</p> <p>4 Q I'll try -- I'll try to make this as clear</p> <p>5 as I can. Is it the CARD provider's date of</p> <p>6 diagnosis that is important to the SSA?</p> <p>7 A Yes, the date of diagnosis is important.</p> <p>8 Q Okay. And in terms of the date that a</p> <p>9 radiologist took the exam, is that information</p> <p>10 that is important to the SSA?</p> <p>11 A May I ask a question?</p> <p>12 Q Sure.</p> <p>13 A In your question, are you saying there's a</p> <p>14 distinction between the radiologist and whoever's</p> <p>15 certifying -- signing off on the checklist?</p> <p>16 Q Yes, I am saying that radiologists in this</p> <p>17 set of CARD cases --</p> <p>18 MR. BECHTOLD: Counsel, questions please.</p> <p>19 MR. DUERK: Sure.</p> <p>20 BY MR. DUERK:</p> <p>21 Q Ms. Nolan, are you aware of anyone but the</p> <p>22 CARD provider signing EHH forms to certify</p> <p>23 patients for Medicare benefits?</p> <p>24 MR. KAKUK: Scope.</p> <p>25 MR. DUERK: I can see that. All right.</p>

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Exhibit C-15

Conducted on June 8, 2023

<p>1 Let me try and clarify.</p> <p>2 BY MR. DUERK:</p> <p>3 Q Ms. Nolan, I apologize. When it comes to</p> <p>4 EHH forms, is it the diagnosing physician who</p> <p>5 signs the EHH form in terms of the POMS policy?</p> <p>6 A It should be the medical provider that</p> <p>7 signs the EHH checklist.</p> <p>8 Q All right. In your view would it be</p> <p>9 appropriate, based on the POMS policy, for anyone,</p> <p>10 other than the medical provider, the physician, to</p> <p>11 sign the EHH checklist and the date of diagnosis</p> <p>12 here?</p> <p>13 A The POMS outlines the medical provider,</p> <p>14 the medical source to sign the EHH checklist.</p> <p>15 Q All right. Thank you. And this one might</p> <p>16 -- this one might require a little bit of</p> <p>17 background and it involves a hypothetical. But</p> <p>18 I'd like you to assume that the radiologist, in a</p> <p>19 -- in a patient's case, is not the one who</p> <p>20 diagnosis the patient.</p> <p>21 If a physician doesn't diagnose the</p> <p>22 patient and doesn't believe that there is a</p> <p>23 diagnosis of asbestos-related disease, should that</p> <p>24 physician, in your view, sign an EHH form for a</p> <p>25 patient when the physician knows there is no</p>	<p>61</p> <p>63</p> <p>1 A That should be the physician as noted on</p> <p>2 the form where it says physician signature.</p> <p>3 Q All right. Skipping to paragraph 23, the</p> <p>4 Social Security Administration's designated</p> <p>5 deponent must testify whether the Social Security</p> <p>6 Administration considers CARD physicians qualified</p> <p>7 physicians for purposes of the Environmental</p> <p>8 Health Hazards Checklist minimum medical evidence</p> <p>9 required section of Step 2.</p> <p>10 Ms. Nolan, do you have any additional</p> <p>11 information, other than what you've already</p> <p>12 provided on this topic?</p> <p>13 A No.</p> <p>14 Q Okay. Paragraph 24, the Social Security</p> <p>15 Administration's designated deponent must testify</p> <p>16 whether the Social Security Administration</p> <p>17 considers CARD's physicians to be qualified</p> <p>18 physicians for purposes of 42 USC Section</p> <p>19 1881A(e)(2)(B)(i)(I).</p> <p>20 Do you have any other information or any</p> <p>21 other response to this question, other than what</p> <p>22 you've already offered?</p> <p>23 A No.</p> <p>24 Q Okay. Going to the next provision,</p> <p>25 paragraph 30. Does the POMS state that a</p>
<p>62</p> <p>1 diagnosis?</p> <p>2 MR. BECHTOLD: Leading.</p> <p>3 Q Go ahead.</p> <p>4 A In my opinion if the medical source does</p> <p>5 not diagnose an asbestos-related disease, the box</p> <p>6 on the checklist that says the individual does not</p> <p>7 have an impairment listed above should be checked.</p> <p>8 Q Okay. So if the physician submitting the</p> <p>9 form does not believe the patient has a diagnosis,</p> <p>10 this box that we see on the EHH form titled</p> <p>11 individual does not have an impairment listed</p> <p>12 above should be filled in by the provider?</p> <p>13 A Yes.</p> <p>14 Q Okay. All right. Paragraph 15, the</p> <p>15 Social Security Administration's designated</p> <p>16 deponent must define the meaning of diagnosis for</p> <p>17 purposes of the Environmental Health Hazards</p> <p>18 Checklist. What response do you have to that</p> <p>19 question, Ms. Nolan?</p> <p>20 A A diagnosis would be a medical</p> <p>21 determination on an individual's disease.</p> <p>22 Q And then, in terms of the individual</p> <p>23 responsible for certifying that the patient has a</p> <p>24 diagnosis on an EHH form, who would that</p> <p>25 individual be?</p>	<p>64</p> <p>1 diagnosis of asbestos-related disease is required</p> <p>2 for Medicare eligibility?</p> <p>3 A Yes.</p> <p>4 Q Paragraph 31, if a person does not have a</p> <p>5 diagnosis of asbestos-related disease, is she</p> <p>6 eligible for EHH Medicare?</p> <p>7 A No.</p> <p>8 Q Paragraph 32, if a person submits a B-read</p> <p>9 chest x-ray interpretation to the Social Security</p> <p>10 Administration that indicates a lung abnormality</p> <p>11 from a radiologist related to sarcoidosis but not</p> <p>12 a diagnosis of asbestos-related disease from a</p> <p>13 qualified physician, is that patient eligible for</p> <p>14 EHH Medicare benefits?</p> <p>15 A An asbestos-related disease needs to be</p> <p>16 identified and diagnosed in order to receive EHH</p> <p>17 Medicare.</p> <p>18 Q All right. Paragraph 33, if a person</p> <p>19 submits a chest x-ray interpretation or a computed</p> <p>20 tomography interpretation, CT scan, to the SSA</p> <p>21 from a radiologist that indicates a lung</p> <p>22 abnormality but not a diagnosis of</p> <p>23 asbestos-related disease, is she eligible for EHH</p> <p>24 Medicare benefits?</p> <p>25 A No.</p>

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<p>1 Q Paragraph 34, if a health care provider 2 submits an EHH checklist form on behalf of a 3 patient that does not include a date of diagnosis, 4 is that patient eligible for EHH Medicare 5 benefits? 6 A No. 7 Q Paragraph 35, if a health care provider 8 submits an EHH health care checklist form on 9 behalf of patient, when the provider has actual 10 knowledge that the patient does not have a 11 diagnosis of asbestos-related disease, is that 12 patient eligible for EHH health care benefits? 13 A No. 14 Q Paragraph 40, are patients with signs of a 15 fractured rib on a B-read chest x-ray but no 16 diagnosis of asbestos-related disease eligible for 17 EHH Medicare benefits? 18 A Can you repeat that, please? 19 Q Sure. Are patients with signs of a 20 fractured rib on a B-read chest x-ray but no 21 diagnosis of asbestos-related disease eligible for 22 EHH Medicare benefits? 23 A No. 24 Q I only have one, two, three, four more 25 paragraphs. And I'd just like to go through these</p>	65	<p>1 they checking the box that says an individual does 2 not have an impairment? 3 Q No, they are signing and dating the EHH 4 form and checking boxes indicating a diagnosis of 5 either asbestosis, pleural thickening or pleural 6 plaques? 7 MR. BECHTOLD: Form of the question. 8 MR. DUERK: What's that? 9 MR. BECHTOLD: The form of the question. 10 I'm not sure that's a question. 11 MR. DUERK: Oh, sorry. 12 BY MR. DUERK: 13 Q Ms. Nolan, would that practice of 14 submitting patients' EHH forms to SSA who do not 15 have a diagnosis of asbestos-related disease when 16 the EHH form itself indicates that they do have a 17 diagnosis, that there is a date of diagnosis, and 18 the CARD physician is signing and dating the EHH 19 form, would that be consistent with the POMS 20 practices in the POMS policy? 21 A No. 22 Q Okay. Next statement. CARD has submitted 23 patients without a diagnosis of asbestos-related 24 disease to the Social Security Administration for 25 Medicare benefits since at least 2013, and</p>	67
<p>1 to see if you have any knowledge or information 2 about them, okay? 3 A Yes. 4 Q Paragraph 41, are the following 5 statements, undisputed by CARD, related to EHH 6 Medicare eligibility consistent with SSA POMS 7 sections HI 00803.001 and 050: CARD has submitted 8 EHH forms to the Social Security Administration 9 when CARD providers were aware that the individual 10 patient did not have a clinical diagnosis of 11 asbestos-related disease. 12 Any response? 13 A No. 14 Q Any response? 15 A No. 16 Q CARD continues its practice of submitting 17 patients' EHH forms to SSA who do not have a 18 diagnosis of asbestos-related disease. 19 Is that consistent with the POMS? 20 A Can you repeat that one more time, please? 21 Q CARD continues its practice of submitting 22 patients' EHH forms to SSA who do not have a 23 diagnosis of asbestos-related disease. 24 Is that consistent with the POMS? 25 A So I have a question. Are they -- are</p>	66	<p>1 presumably since the Affordable Care Act was 2 passed in 2010. 3 Would that practice be consistent with the 4 POMS? 5 A They're submitting -- can you repeat the 6 question? 7 Q Sure. CARD has submitted patient without 8 a diagnosis of asbestos-related disease to the 9 Social Security Administration for Medicare 10 benefits since at least 2013, and presumably since 11 the Affordable Care Act was passed in 2010. 12 I'd like you to assume the same parts of 13 hypothetical that, in those cases, CARD signed the 14 EHH form, said there was a date of diagnosis of an 15 asbestos-related disease and checked the box for 16 the diagnosed impairments of either asbestosis or 17 pleural plaques, pleural thickening. Would that 18 practice be consistent with the POMS? 19 A No. 20 Q Next statement. CARD submitted an EHH 21 form in multiple patients' cases based on a B-read 22 alone when CARD's current medical director knew 23 those patients did not have an asbestos-related 24 disease diagnosis. 25 I'd like you to assume the same facts</p>	68

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Exhibit C-17

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<p>69</p> <p>1 about the EHH form having a date of diagnosis 2 filled out, a box checked for a diagnosed 3 impairment with a physician's signature from CARD. 4 Would that practice be consistent with the Social 5 Security Administration policies listed in the 6 POMS? 7 A No. 8 Q CARD's medical director testified multiple 9 patients' EHH forms were submitted to the Social 10 Security Administration for Medicare benefits even 11 though they did not have a CARD diagnosis of 12 asbestos-related disease. 13 Let's assume the same facts, that the EHH 14 form is signed and dated by a CARD physician with 15 a date of diagnosis filled out and a box checked 16 for a diagnosed impairment. Would that practice 17 be consistent with SSA policies? 18 A No. 19 Q Last statement. CARD knowingly submitted 20 EHH forms to the Social Security Administration in 21 support of Medicare benefits for patients who had 22 no clinical diagnosis of asbestos-related disease. 23 Let's assume that we have -- let's assume 24 that we have a signed, dated EHH form from a 25 physician at CARD indicating a date of diagnosis</p>	<p>71</p> <p>1 Do you have any response to Statement 1 as 2 to whether or not that statement would be 3 consistent with the POMS sections? 4 A It's consistent. 5 Q Okay. Statement 2: But for the purposes 6 of this discussion, though, it's my intention that 7 -- and I think it's the intention of the statute 8 -- that if you got a diagnosis, you're covered; if 9 there's no diagnosis, you're not covered. 10 Question, right. Answer, it's very simple. 11 Question, and in terms of the law itself, as we've 12 covered earlier, there's no provision stated in 13 the Affordable Care Act, the EHH provisions, that 14 creates an exception for a patient to be eligible 15 for Medicare benefits without a diagnosis. 16 Answer, there must be a diagnosis. 17 Is that statement consistent with the POMS 18 manual? 19 A Yes. 20 Q Statement 3: Question, if a patient 21 doesn't have a diagnosis, Answer, correct. 22 Question, of asbestos related disease from Libby 23 amphibole, they should not be Medicare eligible? 24 Answer, correct. 25 Is that statement consistent with the POMS</p>
<p>70</p> <p>1 and a box checked for an asbestos-related disease 2 diagnosed condition. Would that practice be 3 consistent with the Social Security 4 Administration's policies? 5 A No. 6 Q Okay. Ms. Nolan, in terms of the 7 remaining paragraphs, these different provisions 8 appear to be statements from other CARD witnesses. 9 Did you review paragraphs 42, 43, and 44 in 10 consideration of your answers today? 11 A I did review. 12 Q Okay. And in terms of responses? 13 A I'm sorry. I don't know them by heart. 14 Q No, that's okay. I'll go ahead and just 15 relay to you the questions. 16 Are the following sworn statements from 17 Senator Max Baucus consistent with SSA POMS 18 sections HI 00803.001 and 803.050 related to EHH 19 Medicare eligibility? 20 Statement 1: Senator Baucus, would you 21 agree that the purpose of the Environmental Health 22 Hazard provisions in the Affordable Care Act was 23 to provide Medicare benefits for people who were 24 exposed to Libby asbestos; not to provide Medicare 25 benefits in people who are not sick? Answer, yes.</p>	<p>72</p> <p>1 and Social Security Administration policy? 2 A Yes. 3 Q Okay. In terms of any other testimony or 4 statements from Senator Baucus, were there any 5 other statements from Senator Baucus that you were 6 asked to consider in the subpoena, to the best of 7 your knowledge? 8 A Not that I can recall. 9 Q Okay. Have you read or reviewed any 10 deposition testimony from Senator Baucus outside 11 of these three statements? 12 A No. 13 Q Okay. In terms of any conversations that 14 you've had or are aware that occurred between the 15 Social Security Administration and Senator Baucus 16 about the EHH provisions in the Affordable Care 17 Act, are you aware of the existence of any such 18 conversations? 19 A No. 20 Q Okay. And in terms of how the Social 21 Security Administration implements its policies 22 and procedures, are those policies and procedures 23 reflected in the POMS that we've covered? 24 A As they relate to EHH, yes. 25 Q All right. And in terms of who's</p>

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Exhibit C-18

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<p>1 responsibility it is to implement policies and 2 enact these procedures related to Medicare in the 3 POMS, is that the Social Security Administration's 4 responsibility or is there any other agency or 5 individual representative of government who is 6 responsible for implementing these POMS 7 procedures? 8 A It's Social Security's responsibility. 9 Q Okay. Is the following statement from -- 10 this is paragraph 43. Is the following statement 11 from an SSA employee, Sonia Hynes, to CARD about 12 the EHH consistent with SSA POMS section HI 13 00803.001 and 050. Quote, if a claimant has been 14 diagnosed with one of the impairments on that 15 list, they qualify. So to us, either they are 16 diagnosed, or they aren't, close quote. 17 Is that consistent with the POMS in your 18 view or in SSA's view? 19 A Yes. They need to be diagnosed and meet 20 the other criteria that were outlined in the POMS. 21 Q Okay. And in terms of the other criteria 22 that are outlined in the POMS, are you talking 23 about filling an EHH form, checking a box that 24 there is a diagnosis of asbestos-related disease 25 caused by an exposure to asbestos in Libby,</p>	73	<p>1 review of the policy information? 2 A Well, those are the guidelines that are 3 outlined in the Affordable Care Act. 4 Q Paragraph 44, are the following statements 5 from CARD's current clinical director consistent 6 with the POMS section 00803.001 and 00803.050: 7 Question, so a patient can come in, in the 8 hypothetical that we began today, with -- with a 9 fractured rib that appears on a B-read and get 10 Medicare benefits even though CARD knows that that 11 patient doesn't have a diagnosis of 12 asbestos-related disease, correct? Answer, 13 correct. 14 Ms. Nolan, in that scenario, based on the 15 POMS manual and the policies that we've discussed 16 today, is a patient with only a fractured rib that 17 appears on a B-read when CARD knows, or the 18 provider knows, that that patient doesn't have a 19 diagnosis of asbestos-related disease an 20 acceptable basis for Medicare eligibility? 21 A We would need to have the asbestos-related 22 disease diagnosis in order for Medicaid -- 23 Medicare to be given. 24 Q And who would be responsible for asserting 25 that a diagnosis exists?</p>	75
<p>1 Montana and otherwise following the provisions of 2 the POMS? 3 A Including, yes, filing an application, 4 living in Lincoln County. 5 Q Okay. And in terms of anything that's 6 included in the POMS, itself, and in terms of 7 express language, is there anything in the POMS, 8 anywhere that says that a diagnosis is equivalent 9 to a B-read chest x-ray or CT scan? 10 A Can you repeat the question? 11 Q Sure. Is there any language in any of the 12 POMS that we've reviewed here today on screen or 13 that you've reviewed, is there anything that 14 explicitly says that a B-read alone is sufficient 15 for a diagnosis of asbestos-related disease? 16 MR. BECHTOLD: Leading. 17 Or does the requirement state you need a 18 diagnosis from a physician that sends in the EHH 19 form? 20 MR. BECHTOLD: Again, leading. 21 A Diagnose needs to -- 22 Q Go ahead? 23 A The diagnosis needs to come from the 24 medical provider who signs the form. 25 Q And Ms. Nolan, why is that, based on your</p>	74	<p>1 A The medical provider. 2 Q Right. Ms. Nolan, if we could take one 3 five-minute break, I think I'm about ready to wrap 4 all this up. 5 A Okay. 6 Q Great. Thank you. 7 THE VIDEOGRAPHER: We are going off the 8 record. The time is 11:58. 9 (Thereupon, a recess was had.) 10 THE VIDEOGRAPHER: We're back on record. 11 The time is 12:05. 12 BY MR. DUERK: 13 Q All right. Ms. Nolan, we are back on the 14 record after a short break. It's my understanding 15 that you may have some clarifications you'd like 16 to make; is that right? 17 A Yes, thank you. 18 Q Please go ahead. 19 A First, I'd like to clarify that Social 20 Security used the Affordable Care Act's definition 21 of B reader and not my elementary definition of a 22 B reader. 23 Q All right. 24 A And secondly, I would like to clarify the 25 POMS. Social Security actually carries out what</p>	76

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<p>77</p> <p>1 the POMS say. But for this particular section, 2 EHH, it is HHS CMS's POMS where they open the 3 POMS. We work with them to implement. 4 Q Sure. 5 A I didn't make that distinction, that there 6 was another entity involved. 7 Q That makes sense. But regardless of who 8 owns the POMS or who drafted it, or -- is it the 9 SSA's field office, I think it's field office 872, 10 that is tasked with receiving these EHH forms 11 related to Medicare eligibility status? 12 A That is correct. 13 Q Okay. And Ms. Nolan, thank you for your 14 time today. I'd just like to finish up here with 15 this question. 16 Based on your review of the Social 17 Security Administration's policies, the POMS 18 sections, the law, and any other information you 19 considered, is it still the SSA's position that a 20 CARD patient must have a diagnosis of an 21 asbestos-related disease certified by an medical 22 provider on an EHH form in order to be eligible 23 for Medicare benefits? 24 A Yes. 25 Q Thank you. And Ms. Nolan, in terms of the</p>	<p>79</p> <p>1 short break. No one will go away. Let's just go 2 off the record. 3 THE VIDEOGRAPHER: We're going off the 4 record. The time is 12:09. 5 (Thereupon, a recess was had.) 6 THE VIDEOGRAPHER: We are back on the 7 record. The time is 12:17. 8 EXAMINATION BY COUNSEL FOR THE DEFENDANT 9 BY MR. BECHTOLD: 10 Q Hi, Ms. Nolan. My name is a Tim Bechtold 11 and I represent the CARD clinic. I just have a 12 series of follow-up questions. You testified that 13 you used the Affordable Care Act, Section 1881A, 14 to define the POMS, correct? 15 A Yes. 16 Q And -- and you agree that Section 1881A is 17 the basis from which the POMS derive, correct? 18 A Yes. 19 Q And you agree, don't you, that the POMS 20 have to agree with the -- with Section 1881A? 21 MR. DUERK: Objection, foundation. Go 22 ahead. 23 A The POMS follow the law, Section 1881A. 24 Q So Ms. Nolan, you testified in order to 25 prepare for your deposition today that you</p>
<p>78</p> <p>1 information that you've reviewed, are there any 2 exceptions that you are aware of to this position 3 and policy from the SSA, including the B reader 4 scenarios that we have discussed, that would form 5 some sort of end run or alternative route of 6 obtaining EHH Medicare designation, outside of the 7 this EHH form submission process? 8 MR. BECHTOLD: Foundation, form, leading. 9 Q Let me go ahead and rephrase it, make it 10 simpler. 11 Ms. Nolan, are there any exceptions to 12 SSA's policy about an EHH form certified by a 13 provider that you're aware of? 14 A Not to my knowledge. 15 Q Thank you, Ms. Nolan. I have no further 16 questions at this time. 17 MR. BECHTOLD: Ms. Nolan, my name is Tim 18 Bechtold and I represent the CARD clinic in this 19 matter. And I'd like to draw your attention to -- 20 to some exhibits that -- that the court reporter 21 should have, Exhibit 305. Court reporter, would 22 it be possible to put Exhibit 305 up? 23 THE COURT REPORTER: Hang on one second. 24 I don't believe I have Exhibit 305. 25 MR. BECHTOLD: Okay, why don't we take a</p>	<p>80</p> <p>1 reviewed Section 1881A, correct? 2 A Yes. 3 Q And you reviewed POMS HI 00803.001 and 4 POMS HI 00803.050? 5 A Yes, I have reviewed those. 6 Q And you have been designated by the United 7 States to represent the Social Security 8 Administration's position regarding these policies 9 and statute, correct? 10 A Yes. 11 Q Okay. So would you agree that -- that the 12 POMS 803.001 and 803.005 are meant to implement 13 Section 1881A? 14 A Yes. 15 Q And you expect the CARD physicians to 16 follow Section 1881A, correct? 17 A The expectation is that the medical 18 providers will follow the directions that are on 19 the checklist that stem from 1881A. 20 Q Okay. So do you expect CARD physicians to 21 -- or rather, do you expect CARD physicians to 22 defer to the statute as opposed to deferring to 23 the POMS? 24 MR. DUERK: Objection. Relevance, 25 foundation. Go ahead.</p>

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Exhibit C-20

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<p>1 A The medical provider will follow the 2 instructions on the checklist. 3 Q Okay. Does -- does CARD -- does the 4 Social Security Administration interpret section 5 81A for CARD providers? 6 A I'm sorry, repeat your question? 7 Q Does the Social Security Administration 8 interpret Section 1881A for CARD providers? 9 A No. 10 Q And, in fact, the Social Security 11 Administration expects CARD to fill out Step 2 and 12 Step 3 of the EHH form, correct? 13 A Yes. According to the checklist the 14 medical provider will fill out Section 2 and 3. 15 Q Right. Right. And the Social Security 16 Administration doesn't -- doesn't direct the 17 provider how to fill out that section, correct? 18 MR. DUERK: Objection, vague. Go ahead. 19 A Can you restate the question, please? 20 Q The Social Security Administration does 21 not direct the CARD provider how to fill out Step 22 2 and Step 3 of the EHH checklist, correct? 23 A Other than the instructions that are on 24 the checklist, no. 25 Q You testified that -- that the accepted</p>	81	<p>1 purposes of this section, the term environmental 2 exposure affected individual means, A, an 3 individual described in paragraph 2; and B, an 4 individual described in paragraph 3. 5 Sub 2, individual described. In general, 6 an individual described in this paragraph is any 7 individual who, I, is diagnosed with one or more 8 conditions described in subparagraph B? 9 Did I read that correctly? 10 A Yes. 11 Q Now I'm going to skip down to subparagraph 12 B. So can you scroll down so we see all of the 13 highlighted section, please? Okay. So would you 14 agree that an individual who is diagnosed with 15 asbestosis, pleural thickening, or pleural plaques 16 who has established, by interpretation by a B 17 reader qualified physician of a plain chest x-ray, 18 qualifies for Medicare benefits under the act? 19 MR. DUERK: Objection to the extent it 20 calls for a legal interpretation, foundation. Go 21 ahead. 22 A Can you repeat the question? 23 Q Sure. Would you agree that an individual 24 diagnosed with asbestosis, pleural thickening, or 25 pleural plaques, as established by interpretation</p>	83
<p>1 diagnostic methods are listed on the EHH 2 checklist. Do you remember that testimony? 3 A Yes. 4 Q All right. 5 MR. BECHTOLD: Andrew, I'd like to bring 6 up Exhibit 305, if we can, so Ms. Nolan can take a 7 look at it. And I'd like to you scroll down to 8 page 5 of this exhibit. Now go to page 7. 9 BY MR. BECHTOLD: 10 Q Ms. Nolan, do you recognize what Exhibit 11 305 is? 12 (Thereupon, Exhibit 305 was marked for 13 identification.) 14 A Yes. 15 Q What is it? 16 A It's the section 1881 where we pulled the 17 -- are you speaking about the highlighted section 18 specifically? 19 Q No, just what is the document? 20 A Oh, it's the section of the law that we 21 pull the EHH POMS from. 22 Q Okay. I'd like you to draw your attention 23 to section E2 A. Do you see that? 24 A Yes. 25 Q All right. So it says, in general, for</p>	82	<p>1 by a B reader qualified physician of a plain chest 2 x-ray, qualifies for Medicare benefits under the 3 act? 4 A Yes. 5 Q Would you agree that an individual 6 diagnosed with asbestosis, pleural thickening, or 7 pleural plaques, as established by interpretation 8 of a computed tomographic radiograph of the chest 9 by a qualified physician, as determined by the 10 Secretary qualifies for Medicare benefits under 11 the act? 12 A Yes. 13 Q So you testified that if individuals 14 signing the EHH checklist certifies that a 15 diagnosis exists, correct? 16 A Yes, the medical provider signing the EHH 17 checklist. 18 Q Certifies that a diagnosis exists; is that 19 correct? 20 A Yes. 21 Q That is your testimony? 22 A Yes. 23 Q And your testimony was that the diagnosis 24 needs -- needs to come from the provider who signs 25 the form, it says so in the Affordable Care Act.</p>	84

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Exhibit C-21

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<p>1 Do you recall your testimony --</p> <p>2 A Yes.</p> <p>3 Q -- when you said that?</p> <p>4 A Yes.</p> <p>5 Q So you just testified that a diagnosis of</p> <p>6 asbestosis, pleural thickening, or pleural</p> <p>7 plaques, as established by an interpretation by a</p> <p>8 B reader qualified physician of a plain chest</p> <p>9 x-ray, qualifies an individual for Medicare</p> <p>10 benefits, correct?</p> <p>11 MR. DUERK: Objection. Vague, misstates</p> <p>12 the evidence. Go ahead.</p> <p>13 A It's -- can you repeat the question?</p> <p>14 Q Sure. You agreed just a minute ago that a</p> <p>15 diagnosis of asbestosis, pleural thickening, or</p> <p>16 pleural plaques, as established by interpretation</p> <p>17 by a B reader qualified physician of a plain chest</p> <p>18 x-ray, qualifies an individual for Medicare</p> <p>19 benefits under the act, correct?</p> <p>20 MR. DUERK: Same objections. Go ahead.</p> <p>21 A That is certified and signed by a</p> <p>22 physician, yes.</p> <p>23 Q Okay. So -- so if a physician -- so are</p> <p>24 you saying that somewhere in this act it says that</p> <p>25 a diagnosis has to be certified and signed by a</p>	85	<p>1 question.</p> <p>2 MR. DUERK: Thank you.</p> <p>3 BY MR. BECHTOLD:</p> <p>4 Q So if a person has a diagnosis of</p> <p>5 asbestosis, pleural thickening, or pleural</p> <p>6 plaques, as established by an interpretation of a</p> <p>7 B reader qualified physician of a plain chest</p> <p>8 x-ray, should the provider certify that as a</p> <p>9 diagnosis on the EHH form.</p> <p>10 MR. KAKUK: Objection, scope.</p> <p>11 MR. DUERK: Objection, foundation. Go</p> <p>12 ahead.</p> <p>13 A The medical provider is the one that</p> <p>14 actually makes the diagnosis and signs the EHH</p> <p>15 checklist.</p> <p>16 Q Ms. Nolan, you just testified that the</p> <p>17 diagnosis was made by interpretation of a B</p> <p>18 reader.</p> <p>19 MR. DUERK: Objection, misstates --</p> <p>20 Q Did you not?</p> <p>21 MR. DUERK: Misstates the evidence. Go</p> <p>22 ahead.</p> <p>23 A I'm sorry. Can you restate your question?</p> <p>24 Q Sure. If a diagnosis is established by --</p> <p>25 well, if a diagnosis of asbestosis, pleural</p>	87
<p>1 physician?</p> <p>2 A The checklist requires that the form is</p> <p>3 signed by a physician, that the diagnosis is made</p> <p>4 and signed by the physician.</p> <p>5 Q Okay. So we have two issues here, Ms.</p> <p>6 Nolan. The first is that you testified that a</p> <p>7 person who has a diagnosis of asbestosis, pleural</p> <p>8 thickening, or pleural plaques, as established by</p> <p>9 interpretation of a B reader qualified physician</p> <p>10 of a plain chest x-ray, qualifies for Medicare</p> <p>11 benefits, correct?</p> <p>12 MR. DUERK: Same objections.</p> <p>13 A That -- that a physician signs off on.</p> <p>14 Q So -- that a physician signs off on it?</p> <p>15 A Yes, that's --</p> <p>16 Q So if a physician -- if a physician sees</p> <p>17 that a -- that an individual has asbestosis,</p> <p>18 pleural thickening, or pleural plaques as</p> <p>19 established by interpretation by a B reader</p> <p>20 qualified physician of a plain chest x-ray, a</p> <p>21 physician should certify that for qualification</p> <p>22 for Medicare benefits under the act, correct?</p> <p>23 MR. DUERK: Did you say should? I'm</p> <p>24 sorry, I didn't hear you, counsel.</p> <p>25 MR. BECHTOLD: All right. I'll repeat my</p>	86	<p>1 thickening, or pleural plaques is established by</p> <p>2 interpretation of a computed tomographic</p> <p>3 radiograph of the chest by a qualified physician,</p> <p>4 you agreed that that individual qualifies for</p> <p>5 Medicare benefits under the act, correct?</p> <p>6 A Yes.</p> <p>7 Q And so if a provider knows that -- that</p> <p>8 that individual has been diagnosed -- that a</p> <p>9 diagnosis of asbestosis, pleural thickening, or</p> <p>10 pleural plaques is established by the</p> <p>11 interpretation of a computed tomographic</p> <p>12 radiography of the chest by a qualified physician</p> <p>13 has been made under the act, isn't that provider</p> <p>14 obligated to provide the EHH checklist for that</p> <p>15 individual?</p> <p>16 MR. DUERK: Objection, foundation. Calls</p> <p>17 for --</p> <p>18 MR. KAKUK: Scope.</p> <p>19 MR. DUERK: Calls for a medical and legal</p> <p>20 opinion. Go ahead.</p> <p>21 MR. KAKUK: And scope, sorry.</p> <p>22 A I don't know how to answer that.</p> <p>23 Q You testified that a diagnosis -- that the</p> <p>24 individual signing the form needs to certify that</p> <p>25 a diagnosis exists. Do you recall that testimony?</p>	88

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<p>89</p> <p>1 A Yes.</p> <p>2 Q So if a diagnosis exists, didn't that</p> <p>3 provider certify that it exists?</p> <p>4 MR. DUERK: Objection, foundation. Go</p> <p>5 ahead.</p> <p>6 MR. KAKUK: Scope.</p> <p>7 A So the medical provider signing off on the</p> <p>8 diagnosis is the one that treated -- saw the</p> <p>9 patient, then yes, that's correct.</p> <p>10 Q Okay. So if that -- if that -- if the</p> <p>11 provider knows that there's a diagnosis based upon</p> <p>12 interpretation by a qualified physician, he should</p> <p>13 certify that he has a diagnosis for the purpose of</p> <p>14 the EHH checklist?</p> <p>15 MR. KAKUK: Objection, scope.</p> <p>16 MR. DUERK: Objection, form and</p> <p>17 foundation. Go ahead.</p> <p>18 A If the medical provider made the</p> <p>19 diagnosis, they can sign off on the EHH checklist.</p> <p>20 Q Well, you agreed that -- that the -- what</p> <p>21 the statute says is that the diagnosis can be</p> <p>22 established by interpretations by a B reader,</p> <p>23 correct?</p> <p>24 MR. DUERK: Objection. Misstates the</p> <p>25 evidence, foundation. Go ahead.</p>	<p>91</p> <p>1 A Yes.</p> <p>2 Q So if a certifying doctor knows that that</p> <p>3 diagnosis exists, should he certify that diagnosis</p> <p>4 on the EHH checklist for the Social Security</p> <p>5 Administration to consider for Medicare benefits?</p> <p>6 MR. DUERK: Objection. Form, misstates</p> <p>7 the evidence. Go ahead.</p> <p>8 MR. KAKUK: Scope.</p> <p>9 A If the medical providers made the</p> <p>10 diagnosis, then I don't know if -- can I see the</p> <p>11 checklist again?</p> <p>12 Q Sure. Let's take a look at Exhibit 76 and</p> <p>13 go to page 4. Okay. Now let's take a look at</p> <p>14 this. This is Exhibit 76 and this is the</p> <p>15 Environmental Health Hazards Checklist. Can you</p> <p>16 scroll down just a little bit? I mean, scroll up</p> <p>17 a little bit. Great. Thank you. So do you see,</p> <p>18 in Step 2, where it says check the box next to</p> <p>19 diagnosed impairments and print the date of</p> <p>20 diagnosis?</p> <p>21 A Yes.</p> <p>22 Q And do you see minimum medical evidence</p> <p>23 required is interpretation by a B reader qualified</p> <p>24 physician of a plain chest x-ray?</p> <p>25 A Yes.</p>
<p>90</p> <p>1 A Correct.</p> <p>2 Q All right. So if the statute says that a</p> <p>3 diagnosis can be established -- a diagnosis of</p> <p>4 asbestosis, pleural thickening, or pleural plaques</p> <p>5 as established by interpretation by a B reader</p> <p>6 qualified physician of a plain chest x-ray. So in</p> <p>7 other words, under the act a B reader qualified</p> <p>8 physician of a plain chest x-ray can make a</p> <p>9 diagnosis of asbestosis, pleural thickening, or</p> <p>10 pleural plaques, correct?</p> <p>11 MR. DUERK: Objection. Form, foundation.</p> <p>12 Go ahead.</p> <p>13 A Can you repeat it one more time? Repeat</p> <p>14 the question?</p> <p>15 Q Sure. Under the act, can a B reader</p> <p>16 qualified physician, based upon an interpretation</p> <p>17 of a plain chest x-ray, establish a diagnosis of</p> <p>18 asbestosis, pleural thickening or pleural plaques?</p> <p>19 MR. DUERK: Objection. Form, foundation.</p> <p>20 A Yes.</p> <p>21 Q And similarly, can a qualified physician's</p> <p>22 interpretation of a computed tomographic</p> <p>23 radiograph of the chest establish a diagnosis of</p> <p>24 asbestosis, pleural thickening, or pleural</p> <p>25 plaques?</p>	<p>92</p> <p>1 Q Or interpretation of computed tomographic</p> <p>2 radiograph of the chest by a qualified physician,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q That's exactly what it says in the</p> <p>6 Affordable Care Act, Section 1881A, correct?</p> <p>7 A Yes.</p> <p>8 Q So the minimum medical evidence required</p> <p>9 for that diagnosis, as it states in the act, is</p> <p>10 simply interpretation by a B reader qualified</p> <p>11 physician of a plain chest x-ray or interpretation</p> <p>12 of a computed tomographic radiograph of the chest</p> <p>13 by a qualified physician, correct?</p> <p>14 A Yes.</p> <p>15 Q So if a certifying physician knows that</p> <p>16 this diagnosis has been made by a B reader</p> <p>17 qualified physician or a CT interpretation by a</p> <p>18 qualified physician, should he certify that to the</p> <p>19 Social Security Administration for --</p> <p>20 MR. DUERK: Objection, form.</p> <p>21 Q -- consideration of Medicare benefits?</p> <p>22 MR. DUERK: Objection. Form, foundation,</p> <p>23 misstates the evidence.</p> <p>24 MR. KAKUK: Scope. Sorry, scope.</p> <p>25 A The form states that it should be</p>

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<p>93</p> <p>1 completed by a provider.</p> <p>2 Q Okay. And if the provider knows that a</p> <p>3 diagnosis had been made, should he tell the Social</p> <p>4 Security Administration that?</p> <p>5 A Do you mind scrolling down the checklist</p> <p>6 to the bottom -- towards the bottom, please?</p> <p>7 Q Sure.</p> <p>8 A Okay. And ask your question one more</p> <p>9 time, the last part, please?</p> <p>10 Q So if a certifying physician knows that</p> <p>11 this diagnosis has been made by a B reader</p> <p>12 qualified physician or a qualified physician</p> <p>13 interpretation of a CT scan, should he certify</p> <p>14 that diagnosis to the Social Security</p> <p>15 Administration?</p> <p>16 MR. DUERK: Objection. Form, foundation,</p> <p>17 misstates the evidence.</p> <p>18 MR. KAKUK: And scope.</p> <p>19 A I'm unsure. I'm unsure based on my</p> <p>20 interpretation of the checklist and that the</p> <p>21 provider should be the one that is diagnosing and</p> <p>22 signing the checklist.</p> <p>23 Q Well, doesn't it say -- scroll back up,</p> <p>24 please. It says interpretation of a computed</p> <p>25 tomographic reading of radiograph of the chest by</p>	<p>95</p> <p>1 A Can you repeat the question?</p> <p>2 Q Do you know the difference between a</p> <p>3 clinical diagnosis and a diagnosis?</p> <p>4 MR. DUERK: Same objection.</p> <p>5 MR. KAKUK: Same objection.</p> <p>6 A I personally think I know the difference</p> <p>7 between the two.</p> <p>8 Q Okay. So does the Social Security</p> <p>9 Administration distinguish between the two?</p> <p>10 A Not to my knowledge.</p> <p>11 MR. KAKUK: Objection, scope.</p> <p>12 Q So I'd like to bring you back to Exhibit</p> <p>13 305, if I could, and return to page 7. Okay. Now</p> <p>14 your testimony is, is that -- is that these --</p> <p>15 these interpretations of -- as established by a B</p> <p>16 reader, a qualified physician or a qualified</p> <p>17 physician's interpretation of a CT, that that has</p> <p>18 to be the person who signs for that -- for that</p> <p>19 diagnosis. The B reader qualified physician has</p> <p>20 to be the one who signs the EHH form; is that your</p> <p>21 testimony?</p> <p>22 MR. DUERK: Objection, form.</p> <p>23 A The checklist states that the medical</p> <p>24 provider will make the diagnosis by checking one</p> <p>25 of those boxes on checklist and then signing.</p>
<p>94</p> <p>1 a qualified physician or interpretation by a B</p> <p>2 reader qualified physician of a plain chest x-ray,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q So what you're saying is that in order for</p> <p>6 the B reader qualified physician of a plain chest</p> <p>7 x-ray to count it has to come from the person who</p> <p>8 signs -- that B reader, has to be the publisher</p> <p>9 who signs the form?</p> <p>10 A That's my understanding.</p> <p>11 MR. DUERK: Objection.</p> <p>12 Q So that's your understanding of -- that's</p> <p>13 the understanding of Social Security</p> <p>14 Administration?</p> <p>15 MR. KAKUK: Objection, scope.</p> <p>16 Q What's the difference -- does the Social</p> <p>17 Security Administration distinguish between</p> <p>18 clinical diagnoses and a diagnosis?</p> <p>19 MR. KAKUK: Objection, scope.</p> <p>20 MR. DUERK: Objection. Form and</p> <p>21 foundation.</p> <p>22 Q Do you know the difference between a</p> <p>23 clinical diagnosis and a diagnosis?</p> <p>24 MR. KAKUK: Same objection.</p> <p>25 MR. DUERK: Same objection.</p>	<p>96</p> <p>1 Q Where does it say that the medical</p> <p>2 provider will make that diagnosis?</p> <p>3 A It says the medical provider will fill out</p> <p>4 the Section 2.</p> <p>5 Q Okay. And if the medical provider fills</p> <p>6 out Step 2 -- can we go back again to page 4 of</p> <p>7 Exhibit 76? Where does it say that the -- that a</p> <p>8 medical provider has to be the one who makes the</p> <p>9 diagnosis?</p> <p>10 A The form says that Step 2 is completed by</p> <p>11 a provider and the provider is -- is -- checked</p> <p>12 the box next to the diagnosed impairment, print</p> <p>13 the date of the diagnosis. So the assumption is</p> <p>14 that the medical provider is also making the</p> <p>15 diagnosis.</p> <p>16 Q Where is that assumption?</p> <p>17 A It's not on the checklist.</p> <p>18 Q It's not in the law either, is it?</p> <p>19 MR. KAKUK: Objection, scope.</p> <p>20 MR. DUERK: Objection, form.</p> <p>21 Q You've been designated by the United</p> <p>22 States as the one who has the policy -- who has</p> <p>23 that policy and knowledge of Section 1881A to</p> <p>24 respond to these questions on behalf of the Social</p> <p>25 Security Administration, correct?</p>

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Exhibit C-24

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<p>97</p> <p>1 A I am responsible for the POMS.</p> <p>2 Q And the POMS are based upon Section 1881A,</p> <p>3 correct?</p> <p>4 A The POMS are pulled from Section 1881A,</p> <p>5 but we have general counsel that works with us to</p> <p>6 interpret when legislation comes in. And the --</p> <p>7 specifically 1881A in this situation.</p> <p>8 Q All right. So you testified that there's</p> <p>9 an assumption that it will be the provider who</p> <p>10 make the diagnosis. Where is that assumption</p> <p>11 stated?</p> <p>12 A That is my opinion. That it's an</p> <p>13 assumption that the provider would be the one to</p> <p>14 make the diagnosis and sign off on it.</p> <p>15 Q Okay. So you agree it doesn't say that in</p> <p>16 the law, correct?</p> <p>17 A Correct.</p> <p>18 Q And you agree it doesn't say that in the</p> <p>19 Environmental Health Hazards Checklist, correct?</p> <p>20 A It does not say that directly, correct.</p> <p>21 Q No. And so why wouldn't -- if a</p> <p>22 physician, who's the provider, who knows that</p> <p>23 there's been a diagnosis that has been made based</p> <p>24 upon an interpretation by a B reader qualified</p> <p>25 physician of a plain chest x-ray, doesn't it make</p>	<p>99</p> <p>1 the law nor the EHH checklist requires that the</p> <p>2 diagnosis, certified by the provider, has been</p> <p>3 made by the provider, correct?</p> <p>4 MR. DUERK: Objection. Form, foundation,</p> <p>5 misstates prior testimony. Go ahead.</p> <p>6 A There's no specific language in the POMS</p> <p>7 that states that the provider has to diagnose --</p> <p>8 be the one that diagnosis the asbestos-related</p> <p>9 disease.</p> <p>10 Q Correct. Thank you. So if that provider</p> <p>11 knows the diagnosis has been made based upon, for</p> <p>12 example, a B reader's interpretation of a chest</p> <p>13 x-ray, why isn't it appropriate for him to certify</p> <p>14 that diagnosis to the Social Security</p> <p>15 Administration?</p> <p>16 MR. DUERK: Objection. Form, foundation,</p> <p>17 misstates prior testimony. Go ahead.</p> <p>18 A Being that it's not specified in the POMS,</p> <p>19 I don't know. I don't know now that -- that it</p> <p>20 would not be accepted.</p> <p>21 Q So the POMS don't specifically prohibit a</p> <p>22 provider from certifying an EHH checklist to the</p> <p>23 Social Security Administration based upon the</p> <p>24 diagnosis by -- or rather, a diagnosis established</p> <p>25 by the interpretation of a B reader qualified</p>
<p>98</p> <p>1 sense for him to certify that to the Social</p> <p>2 Security Administration?</p> <p>3 MR. DUERK: Objection. Foundation, form.</p> <p>4 Go ahead.</p> <p>5 MR. KAKUK: And scope.</p> <p>6 A I don't know that I know the answer to</p> <p>7 that question.</p> <p>8 Q You have been directed as -- you've been</p> <p>9 identified as a person who has knowledge of this</p> <p>10 by the Social Security Administration. So I guess</p> <p>11 either the Social Security Administration has no</p> <p>12 opinion; is that correct?</p> <p>13 MR. DUERK: Objection, form. Go ahead.</p> <p>14 MR. KAKUK: Vague and scope.</p> <p>15 Q Okay. The Social Security takes no</p> <p>16 position whether or not a provider has to be the</p> <p>17 one who makes the diagnosis when they certify an</p> <p>18 EHH checklist. Is that your position or not?</p> <p>19 MR. DUERK: Objection. Misstates prior</p> <p>20 testimony and form. Go ahead.</p> <p>21 Q I'm just asking.</p> <p>22 MR. DUERK: Same objections.</p> <p>23 A I'm sorry. Repeat the question one more</p> <p>24 time?</p> <p>25 Q Sure. We agree, don't we, that neither</p>	<p>100</p> <p>1 physician or plain chest x-ray?</p> <p>2 MR. DUERK: Objection. Form, foundation,</p> <p>3 and to the extent it misstates former testimony.</p> <p>4 Go ahead.</p> <p>5 A The POMS, as they are written out, do not</p> <p>6 contain a statement specifically to that</p> <p>7 situation.</p> <p>8 Q Similarly for an interpretation of a CT</p> <p>9 scan by a qualified physician?</p> <p>10 A Correct.</p> <p>11 Q So I'm just going to see if I understand</p> <p>12 the testimony from the Social Security</p> <p>13 Administration. First, the Social Security</p> <p>14 Administration agrees that the law provides that a</p> <p>15 diagnosis of asbestosis, pleural thickening, or</p> <p>16 pleural plaques is established by interpretation</p> <p>17 by a B reader qualified physician of a plain chest</p> <p>18 x-ray or interpretation of a computed tomographic</p> <p>19 radiograph of the chest by a qualified physician,</p> <p>20 correct?</p> <p>21 MR. DUERK: Objection. Form, foundation,</p> <p>22 misstates prior testimony.</p> <p>23 A Can you repeat the question?</p> <p>24 Q Sure. And to make it easier, we can put</p> <p>25 Exhibit 305 back on. Page 7. So the Social</p>

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Exhibit C-25

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<p>1 Security Administration agrees that a diagnosis of 2 asbestosis, pleural thickening, or pleural plaques 3 can be established -- or a diagnosis of 4 asbestosis, pleural thickening, or pleural plaques 5 is established by the interpretation by a B reader 6 qualified physician of a plain chest x-ray or 7 interpretation of a computed tomographic 8 radiograph of the chest by a qualified physician, 9 as determined by the Secretary, qualifies an 10 individual for Medicare benefits? 11 A Yes. 12 Q Okay. And now let's go back to Exhibit 13 76. Page 4 again. And the Social Security 14 Administration agrees that there's nothing in the 15 statute, Section 1818A, or the POMS that prohibits 16 a provider from certifying a diagnosis of 17 asbestosis, pleural thickening, or pleural plaques 18 based upon interpretation by a B reader qualified 19 physician of a plain chest x-ray or interpretation 20 of computed tomographic radiographic or chest by a 21 qualified physician, correct? 22 A Yes. 23 Q Ms. Nolan, I'd like to take about a 24 ten-minute break. It's now about five minutes or 25 so to the hour. How about we reconvene five</p>	101	<p>1 A Can you repeat the question? 2 Q Do you agree that the minimum medical 3 evidence required to qualify an individual for EHH 4 Medicare benefits is established by 1881A? 5 MR. DUERK: Objection. Form, foundation. 6 A Yes. 7 Q That was your prior testimony, correct? 8 MR. DUERK: Same objections. 9 A I believe so. 10 Q And I think your testimony was is that the 11 Social Security Administration relies on Section 12 1881A for the definition of what a qualified 13 physician is, correct? 14 A Correct. 15 Q And you testified that, for the -- 16 defining the meaning of diagnosis, for purposes of 17 the Environmental Health Hazard Checklist, your 18 testimony was that it's a medical determination of 19 an individual disease, correct? 20 A That was my personal definition, yes. 21 Q That's your personal definition not the 22 definition of the Social Security Administration? 23 A We would have used what was in the 24 Affordable Care Act. You will not see that -- a 25 definition for that in the POMS.</p>	103
<p>1 minutes after the hour? 2 A Okay. 3 Q All right. Thanks. Let's go off the 4 record. 5 THE VIDEOGRAPHER: We're going off the 6 record. The time is 12:53. 7 (Thereupon, a recess was had.) 8 THE VIDEOGRAPHER: We're back on record. 9 The time is 1304. 10 BY MR. BECHTOLD: 11 Q Ms. Nolan, does Section 1881A distinguish 12 between the terms clinical diagnosis and 13 diagnosis? 14 A I'm unsure. 15 Q Did the Social Security Administration 16 POMS distinguish between the terms clinical 17 diagnosis and diagnosis? 18 A I don't believe so. 19 Q You agree that the minimum medical 20 evidence required for -- to qualify a person for 21 Medicare benefits -- to qualify a person for EHH 22 Medicare benefits is established by Section 1881A, 23 correct? 24 MR. DUERK: Objection. Foundation, form. 25 Go ahead.</p>	102	<p>1 Q Okay. I'm not sure I caught your answer 2 to this question but does the Social Security 3 Administration consider the physicians at the CARD 4 clinic qualified physicians for purposes of 5 Section 1881A? 6 A I don't know that I can answer that. Are 7 they a provider? It's -- in the POMS it talks 8 about the provider medical source. 9 Q Okay. Paragraph 24 of the subpoena 10 specifically asks that question. Have you been 11 prepared to answer that? 12 A Can you repeat the question? 13 Q Sure. Does the Social Security 14 Administration consider CARD's physicians to be 15 qualified physicians for purposes of Section 16 1881A? 17 A If they match the definition in 1881A then 18 yes. 19 Q So Ms. Nolan, were you involved in the 20 development of the Environmental Health Hazard 21 Checklist back in 2010 and 2011? 22 A No. 23 Q Did you communicate with anyone -- or 24 rather, were you involved in the development of 25 the POMS section HI 00803.001 in 2010 and 2011?</p>	104

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<p>105</p> <p>1 A No.</p> <p>2 Q Were you involved in the development of</p> <p>3 the POMS HI 00803.050 in 2010 and 2011?</p> <p>4 A No.</p> <p>5 Q Were you involved in the amendments to</p> <p>6 these both of those POMS in 2022?</p> <p>7 A No. That was a systemic change from our</p> <p>8 publication staff. So no.</p> <p>9 Q So to summarize then, you were never</p> <p>10 involved in development of the POMS or their</p> <p>11 implementation, correct?</p> <p>12 A I did not write the POMS or develop their</p> <p>13 implementation, correct.</p> <p>14 Q So have you ever been involved with the</p> <p>15 implementation of either of those POMS sections at</p> <p>16 any time?</p> <p>17 A No.</p> <p>18 Q But you're the person at the Social</p> <p>19 Security Administration with the most knowledge,</p> <p>20 correct?</p> <p>21 A Correct. The individual that wrote the</p> <p>22 POMS is deceased and the other individual is</p> <p>23 retired that helped.</p> <p>24 Q And did you communicate with them prior to</p> <p>25 your testimony today?</p>	<p>107</p> <p>1 consistent with the POMS section HI 00803.001 and</p> <p>2 HI 00803.050. And I'm going to just go over that</p> <p>3 testimony right now.</p> <p>4 You testified that CARD -- to this</p> <p>5 statement, you said this was not consistent with</p> <p>6 the POMS, CARD has submitted EHH forms to the</p> <p>7 Social Security Administration when CARD providers</p> <p>8 were aware that the individual patient did not</p> <p>9 have a clinical diagnosis of asbestos-related</p> <p>10 disease. Do you recall your testimony?</p> <p>11 A Yes, I believe so.</p> <p>12 Q You said it was not consistent with the</p> <p>13 POMS, correct?</p> <p>14 A I believe so.</p> <p>15 Q What is a clinical diagnosis?</p> <p>16 A Did you say what is a clinical diagnosis?</p> <p>17 Q Yes.</p> <p>18 MR. KAKUK: Objection, scope.</p> <p>19 A I don't know.</p> <p>20 Q Well, you offered an opinion about this</p> <p>21 statement. So you clearly must have -- SSA must</p> <p>22 have an opinion of what a clinical diagnosis is.</p> <p>23 A I believe I gave my opinion of what a</p> <p>24 clinical diagnosis was or is.</p> <p>25 Q I don't think you did.</p>
<p>106</p> <p>1 A No.</p> <p>2 Q Not the dead guy. Would you agree -- or</p> <p>3 rather, would the Social Security Administration</p> <p>4 agree that if there is a -- differences in</p> <p>5 interpretation of -- of the POMS that the -- the</p> <p>6 -- the guiding light should be Section 1881A?</p> <p>7 MR. DUERK: Objection, foundation.</p> <p>8 A If there's a disagreement with what's in</p> <p>9 the POMS we would consult with HHS CMS.</p> <p>10 Q Would you agree that there is an ambiguity</p> <p>11 date in the POMS as they exist today?</p> <p>12 MR. DUERK: Objection. Foundation, form.</p> <p>13 Go ahead.</p> <p>14 A If we had any concerns with the POMS we</p> <p>15 would consult HHS CMS.</p> <p>16 Q So the SSA has no concerns with POMS HI</p> <p>17 00803.050, correct?</p> <p>18 A I am not aware of any issues that we have.</p> <p>19 And just to clarify, generally, when we are -- are</p> <p>20 made aware of issues, there's an internal process</p> <p>21 that we use to resolve those issues. And that</p> <p>22 would, again, take us back to HHS CMS to resolve.</p> <p>23 So I am not aware of any known issues.</p> <p>24 Q Okay. You testified earlier today that --</p> <p>25 about some things that you considered were not</p>	<p>108</p> <p>1 A Okay. Can you repeat the statement?</p> <p>2 Q Sure. You said this was not consistent</p> <p>3 with the POMS, CARD has submitted EHH forms to</p> <p>4 Social Security Administration when CARD providers</p> <p>5 who were aware of individual clinical did not have</p> <p>6 a clinical diagnosis of asbestos-related disease.</p> <p>7 And so I ask you, what is a clinical diagnosis?</p> <p>8 MR. DUERK: Same objection. Go ahead.</p> <p>9 Q Or would you rather withdraw your opinion</p> <p>10 about whether that's consistent with the POMS?</p> <p>11 MR. DUERK: Objection, form.</p> <p>12 A I'm sorry to do this to you. Can you</p> <p>13 repeat the question one more time? And statement?</p> <p>14 Q Sure, the statement is CARD has submitted</p> <p>15 EHH forms to the Social Security Administration</p> <p>16 when CARD providers were aware that the individual</p> <p>17 patient did not have a clinical diagnosis of</p> <p>18 asbestos-related disease.</p> <p>19 MR. DUERK: Is there a question?</p> <p>20 Q Would you like to withdraw your prior</p> <p>21 testimony that this was not consistent with the</p> <p>22 POMS?</p> <p>23 MR. DUERK: Objection. Form, go ahead.</p> <p>24 A I don't -- I don't want to withdraw my --</p> <p>25 my testimony.</p>

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<p>109</p> <p>1 Q Okay.</p> <p>2 A Prior testimony.</p> <p>3 Q Then you have to tell me what a clinical</p> <p>4 diagnosis is.</p> <p>5 A A diagnosis that is made by the provider.</p> <p>6 Q So is there anything -- rather, let's</p> <p>7 start here. What is the purpose of a -- what is</p> <p>8 the purpose of Section 10323 of the Affordable</p> <p>9 Care Act, the Medicare Coverage for Individuals</p> <p>10 Exposed to Environmental Health Hazards?</p> <p>11 MR. DUERK: Objection. Foundation, vague.</p> <p>12 Go ahead.</p> <p>13 MR. KAKUK: Scope.</p> <p>14 A What's the --</p> <p>15 Q Yeah. Why did -- why did Congress amend</p> <p>16 -- why did Congress insert this section into the</p> <p>17 Affordable Care Act to provide coverage --</p> <p>18 Medicare coverage for people exposed to</p> <p>19 environmental health hazards?</p> <p>20 MR. DUERK: Objection, foundation. Go</p> <p>21 ahead.</p> <p>22 MR. KAKUK: Scope.</p> <p>23 A So it's my understanding that there was a</p> <p>24 need to provide health insurance coverage for</p> <p>25 individuals in a certain area in Montana because a</p>	<p>111</p> <p>1 Q Okay. And should they follow the law as</p> <p>2 well?</p> <p>3 A They should follow --</p> <p>4 MR. DUERK: Asked and answered.</p> <p>5 A -- the checklist.</p> <p>6 Q So your testimony is they should not</p> <p>7 follow Section 1881A?</p> <p>8 MR. DUERK: Objection, form. Go ahead.</p> <p>9 A The provider should follow the checklist</p> <p>10 as established in the POMS.</p> <p>11 Q Okay. I agree with that. But would you</p> <p>12 agree that the provider should also follow Section</p> <p>13 1881A?</p> <p>14 MR. DUERK: Asked and answered.</p> <p>15 Q It's just a yes or no question.</p> <p>16 MR. DUERK: Same objection. Form, asked</p> <p>17 and answered.</p> <p>18 A So the providers should follow the</p> <p>19 checklist that's outlined in the POMS.</p> <p>20 Q But that's not my question. The question</p> <p>21 is should the provider follow Section 1881A?</p> <p>22 MR. DUERK: Asked and answered.</p> <p>23 Q Just yes or no.</p> <p>24 MR. DUERK: Same objection.</p> <p>25 A I don't know that I can answer that. I</p>
<p>110</p> <p>1 company that was providing that coverage before</p> <p>2 had gone bankrupt. That's my understanding.</p> <p>3 Q Why would the Social Security</p> <p>4 Administration want to provide Medicare benefits</p> <p>5 to people who have environmental health hazard</p> <p>6 exposures?</p> <p>7 A Social Security is following the law.</p> <p>8 Q So you would agree that the Social</p> <p>9 Security Administration should follow Section</p> <p>10 1881A and implementation of the law, correct?</p> <p>11 MR. DUERK: Objection, foundation. Go</p> <p>12 ahead.</p> <p>13 A Social Security Administration follows the</p> <p>14 laws that are set before us. I agree to that,</p> <p>15 yes.</p> <p>16 Q Including Section 1881A, right?</p> <p>17 A Correct.</p> <p>18 Q And you would agree, wouldn't you, that</p> <p>19 CARD providers should also follow Section 1881A,</p> <p>20 correct?</p> <p>21 MR. DUERK: Objection. Form, foundation.</p> <p>22 Go ahead.</p> <p>23 A The medical provider should follow what's</p> <p>24 in the POMS, which would include the EHH</p> <p>25 checklist.</p>	<p>112</p> <p>1 don't know if providers have the knowledge of</p> <p>2 1881A on their own. So I can't answer that.</p> <p>3 Q Okay. And so should the Social Security</p> <p>4 Administration follow Section 1881A?</p> <p>5 A Social Security Administration should</p> <p>6 follow the laws and legislation that's provided</p> <p>7 for us, yes.</p> <p>8 MR. BECHTOLD: Okay. Great. All right.</p> <p>9 That's all the questions I have for now, Ms.</p> <p>10 Nolan. Thank you for your help.</p> <p>11 MR. DUERK: Ms. Nolan, I have a few</p> <p>12 follow-up questions for you. But just to make</p> <p>13 sure that I am streamlined, I'd like to take 5</p> <p>14 minutes and return after a short break.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. DUERK: Thank you.</p> <p>17 THE VIDEOGRAPHER: We're going off the</p> <p>18 record. The time is 1321.</p> <p>19 (Thereupon, a recess was had.)</p> <p>20 THE VIDEOGRAPHER: We're back on record.</p> <p>21 The time is 1329.</p> <p>22 RE-EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>23 BY MR. DUERK:</p> <p>24 Q Thanks for that short break, Ms. Nolan. I</p> <p>25 just have a few follow-up questions based on Mr.</p>

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Exhibit C-28

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<p>1 Bechtold's cross-examination, okay?</p> <p>2 A Yes.</p> <p>3 Q So first, in terms of the difference</p> <p>4 between a clinical diagnosis or a diagnosis, do</p> <p>5 you recall Mr. Bechtold's questions about your</p> <p>6 understanding of the difference between a clinical</p> <p>7 diagnosis or a diagnosis?</p> <p>8 A Yes.</p> <p>9 Q All right. If we could turn to Exhibit</p> <p>10 135, page 17. If we could go to the bottom. I'm</p> <p>11 looking at paragraph 41. I believe Mr. Bechtold</p> <p>12 asked about the question -- or the statement, CARD</p> <p>13 has submitted EHH forms to the Social Security</p> <p>14 Administration when CARD providers were aware that</p> <p>15 the individual patient did not have a clinical</p> <p>16 diagnosis of asbestos-related disease. Do you see</p> <p>17 that question?</p> <p>18 (Thereupon, Exhibit 135 was marked for</p> <p>19 identification.)</p> <p>20 A Yes.</p> <p>21 Q And I believe there was some discussion</p> <p>22 about that word, clinical diagnosis. But I'd like</p> <p>23 to point to the very next statement, CARD</p> <p>24 continues its practice of submitting patients EHH</p> <p>25 forms to SSA who do not have a diagnosis</p>	113	<p>1 beginning of this section and the language there.</p> <p>2 And I'll read it. Please tell me if I've read it</p> <p>3 correctly.</p> <p>4 In general, for purposes of this section,</p> <p>5 the term environmental exposure affected</p> <p>6 individual means an individual described in</p> <p>7 paragraph 2.</p> <p>8 First, did I read that part of it</p> <p>9 correctly?</p> <p>10 A Yes.</p> <p>11 Q Okay. And it also does reference, in</p> <p>12 section B, an individual described in paragraph 3.</p> <p>13 What I'd like to do is look at paragraph 2. So</p> <p>14 I'll read this section describing the</p> <p>15 environmental exposure affected individual.</p> <p>16 Please tell me if I've read the beginning part of</p> <p>17 the law correctly.</p> <p>18 Individual described. In general, an</p> <p>19 individual described in this paragraph is any</p> <p>20 individual who is diagnosed with one or more</p> <p>21 conditions described in subparagraph B. Did I</p> <p>22 read that correctly?</p> <p>23 A Yes.</p> <p>24 Q Okay. So then we go down to the</p> <p>25 conditions described. So if we could scroll down</p>	115
<p>1 asbestos-related disease. Did I read that</p> <p>2 correctly?</p> <p>3 A Yes.</p> <p>4 Q Okay. And Ms. Nolan, is it still SSA's</p> <p>5 position that the practice of submitting patients'</p> <p>6 EHH forms to the Social Security Administration</p> <p>7 who do not have a diagnosis of asbestos-related</p> <p>8 disease would not be consistent with the POMS?</p> <p>9 A Yes.</p> <p>10 Q All right. In terms of Mr. Bechtold's</p> <p>11 questions about the differences in language</p> <p>12 between the Affordable Care Act and the POMS, I'd</p> <p>13 like to turn to Exhibit 305, the language that Mr.</p> <p>14 Bechtold put in front of you in the Affordable</p> <p>15 Care Act. Specifically, if we could look at that</p> <p>16 part of Exhibit 305 that has the highlighted</p> <p>17 section, that would be helpful.</p> <p>18 So what I'd like to do is go up just a</p> <p>19 little bit to Section 2A, which should be a little</p> <p>20 further up. There we go. Okay. So Ms. Nolan, do</p> <p>21 you remember the discussion about this section of</p> <p>22 the Affordable Care Act during your direct -- your</p> <p>23 cross-examination?</p> <p>24 A Yes.</p> <p>25 Q Okay. So I'd like to focus on the very</p>	114	<p>1 so we can see the entire highlighted section, that</p> <p>2 would be helpful.</p> <p>3 Ms. Nolan, I'll read the conditions</p> <p>4 described. Please tell me if I've read it</p> <p>5 correctly, okay?</p> <p>6 A Yes.</p> <p>7 Q So now we're down into the conditions</p> <p>8 described for those diagnosed individuals.</p> <p>9 Conditions described. For purposes of</p> <p>10 subparagraph A, the following conditions are</p> <p>11 described in this subparagraph; asbestosis,</p> <p>12 pleural thickening, or pleural plaques as</p> <p>13 established by 1, interpretation by a B reader</p> <p>14 qualified physician of a plain chest x-ray or</p> <p>15 interpretation of a computed tomographic</p> <p>16 radiograph of the chest by a qualified physician</p> <p>17 as determined by the Secretary.</p> <p>18 Did I read that section correctly?</p> <p>19 A Yes.</p> <p>20 Q Okay. So if you look at this section of</p> <p>21 the law, nowhere here does it say that B readers</p> <p>22 diagnose when they read a plain chest x-ray or</p> <p>23 interpret a CT scan, correct?</p> <p>24 A Correct.</p> <p>25 Q All right. So here's what I'm trying to</p>	116

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<p>1 address, as squarely and simply as I can. When it 2 comes to the Affordable Care Act and the POMS 3 section, based on the information you reviewed, 4 regardless of what minimum medical evidence is 5 used to establish a diagnosis, is it the Social 6 Security Administration's position that it is the 7 provider, the doctor, the physician, the medical 8 care provider who fills out the EHH form who 9 determines whether or not a diagnosis exists? 10 A Yes. 11 Q Okay. So if we could go to Exhibit 76, 12 page 4. I'll put the EHH form in front of you 13 again. We'll be looking at the main box in 14 section 2 of the form, where Step 2 reads; 15 identify the asbestos related condition and its 16 date of diagnosis. Do you see in parenthesis 17 completed by the provider? 18 A Yes. 19 Q Okay. Mr. Bechtold asked you whether 20 there was language in the POMS or language in the 21 law that indicated that the diagnosis had to be 22 rendered by the provider. 23 Do you recall that part of your 24 cross-examination? 25 A Yes.</p>	117	<p>1 establishes that B readers do not diagnose and 2 that CARD providers know that B readers do not 3 diagnose and the evidence also establishes -- if 4 the evidence also establishes that the B readers 5 do not fill out these EHH forms and check the 6 boxes related to a diagnosis of asbestos-related 7 disease. And if it turns out CARD is aware of all 8 of these points and they still fill out the form 9 certifying that there is a diagnosis of 10 asbestos-related disease, would it be problematic, 11 in your mind, if CARD, when they filled out this 12 form and checked all these boxes that a diagnosis 13 exists -- existed for the patient, would it be 14 problematic in your mind if a provider filled out 15 this form when they knew that that patient did not 16 have any diagnosis of asbestos-related disease of 17 whatever type or kind? 18 MR. BECHTOLD: Foundation, leading. 19 Q Go ahead. 20 A In my opinion it would be. Because 21 Medicare benefits are being granted based on 22 completion of this form. 23 Q All right. And in terms of whether or not 24 B readers diagnose, is that any kind of 25 information that the SSA has any knowledge of at</p>	119
<p>1 Q According to Step 2 in the Program 2 Operations Manual System from the Social Security 3 Administration, based on Step 2 here, is the 4 identification of the asbestos-related condition 5 or conditions and its date of diagnosis indicated 6 on the EHH form by the provider? 7 A I'm sorry. Can you repeat the question? 8 Q Sure. And thank you for asking for 9 clarification. Based on what we see on this EHH 10 form, which is page 4 of the POMS policies, whose 11 responsibility is it to check the box next to a 12 diagnosed impairment? 13 A The provider. 14 Q All right. So in terms of submitting the 15 Medicare claim form itself to the Social Security 16 Administration, it's the provider, or the CARD 17 physician in this instance, who checks the box 18 about the diagnosed impairment, the date of 19 diagnosis, and forwards the form to the Social 20 Security Administration; is that right? 21 A Yes. 22 Q Okay. In terms of Mr. Bechtold's 23 questions, I was getting hung up on the way that 24 the language was used. And I'll just establish 25 this, Ms. Nolan, if evidence in this trial</p>	118	<p>1 any point in this process, based on your review of 2 the policies that were part of your investigation 3 into this? 4 A No. 5 Q Okay. Is it fair to say that the Social 6 Security Administration is relying on the 7 physician who certifies that a diagnosis exists on 8 an EHH form to make that determination? 9 A Yes. 10 Q Okay. In terms of Mr. Bechtold's 11 questions about whether there was the minimum 12 evidence of a B-read interpreting -- well, the 13 language here on the form says interpretation by a 14 B reader qualified physician of a plain chest 15 x-ray or interpretation of computed tomographic 16 radiograph of the chest by a qualified physician. 17 Do you see that language? 18 A Yes. 19 Q Okay. And again, just to clarify, there 20 may be an interpretation by a B reader qualified 21 physician of a plain chest x-ray in a certain 22 patient's case. But in order for the patient to 23 get Medicare benefits, first, the minimum medical 24 evidence required would be that that 25 interpretation indicated that there was an</p>	120

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Exhibit C-30

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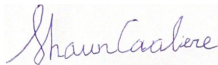
<p>121</p> <p>1 asbestos-related disease, fair?</p> <p>2 MR. BECHTOLD: Foundation, leading.</p> <p>3 Q Go ahead.</p> <p>4 A Can you repeat that one more time?</p> <p>5 Q Sure. Maybe I'll address it this way; for</p> <p>6 a moment, Ms. Nolan, in response to Mr. Bechtold's</p> <p>7 cross-examination questions, I want you to assume</p> <p>8 that, yes, we do have an interpretation by a B</p> <p>9 reader of a plain chest x-ray in a patient's case,</p> <p>10 okay?</p> <p>11 A Okay.</p> <p>12 Q And under the POMS form, the minimum</p> <p>13 medical evidence required suggests that that's</p> <p>14 evidence you would need establish, whether there's</p> <p>15 a diagnosis of asbestos-related disease, right?</p> <p>16 A Correct.</p> <p>17 Q Okay. But the minimum medical evidence</p> <p>18 required, both in this column on the EHH form and</p> <p>19 in the law, it doesn't indicate one way or another</p> <p>20 what has to be included in that B reader</p> <p>21 interpretation; is that fair?</p> <p>22 A Yes.</p> <p>23 Q Okay. However, in order to form a</p> <p>24 diagnosis, the EHH form and the law seem to</p> <p>25 indicate that, at a minimum, you need to have</p>	<p>123</p> <p>1 A Yes.</p> <p>2 MR. BECHTOLD: Foundation and leading.</p> <p>3 Q Okay. So anyway you slice it, Ms. Nolan,</p> <p>4 is a diagnosis of an asbestos-related disease from</p> <p>5 a provider required in order for a person to get</p> <p>6 Medicare benefits?</p> <p>7 A Yes.</p> <p>8 Q Okay. There were some other questions</p> <p>9 about whether -- from Mr. Bechtold about whether</p> <p>10 or not you would change your -- change your</p> <p>11 testimony. And I just want to be sure that</p> <p>12 nothing in your cross-examination changed any of</p> <p>13 your testimony, based on that cross-examination,</p> <p>14 okay?</p> <p>15 If I could turn to Exhibit 135 again. I'm</p> <p>16 looking at page 16, paragraph 32. Ms. Nolan, I</p> <p>17 want to determine that this is still your</p> <p>18 testimony today, if a person submits a B reader</p> <p>19 chest x-ray interpretation to the SSA that</p> <p>20 indicates a lung abnormality from a radiologist</p> <p>21 related to sarcoidosis but not a diagnosis of</p> <p>22 asbestos-related disease from a qualified</p> <p>23 physician, is that patient eligible for EHH</p> <p>24 Medicare benefits?</p> <p>25 Earlier you testified, no, the patient is</p>
<p>122</p> <p>1 either an interpretation by a B reader or a</p> <p>2 qualified physician of a chest x-ray or a CT; is</p> <p>3 that a fair assumption?</p> <p>4 A Repeat that for me one more time.</p> <p>5 Q Sure. And in terms of the minimum medical</p> <p>6 evidence required, both the law and the POMS and</p> <p>7 the EHH form required that you, at least, need to</p> <p>8 have some interpretation of a CT or a B-read chest</p> <p>9 x-ray, right?</p> <p>10 A Correct.</p> <p>11 Q Okay. And if -- if you have that minimum</p> <p>12 medical evidence, then the physician or the</p> <p>13 provider can look at that minimum medical evidence</p> <p>14 and determine whether there is a diagnosis of</p> <p>15 asbestos-related disease; is that fair?</p> <p>16 A Yes.</p> <p>17 Q Okay. So what I want to clarify here is</p> <p>18 that while the minimum medical evidence required</p> <p>19 here is that there is a scan read by a B reader or</p> <p>20 a qualified CT reading physician, while there is</p> <p>21 that requirement for a scan, it's not the scan</p> <p>22 itself that is the diagnosis of asbestos-related</p> <p>23 disease. The scan can be the basis for a</p> <p>24 diagnosis made by the provider when it comes to</p> <p>25 the EHH form; is that a fair assumption?</p>	<p>124</p> <p>1 not eligible for Medicare benefits. Is that still</p> <p>2 your testimony?</p> <p>3 MR. BECHTOLD: Beyond to scope.</p> <p>4 A Yes.</p> <p>5 Q In terms of Mr. Bechtold's</p> <p>6 cross-examination, I want to make sure that none</p> <p>7 of his questions or none the issues that he</p> <p>8 brought up changed your testimony related to</p> <p>9 paragraph 33?</p> <p>10 If a person submits a chest x-ray</p> <p>11 interpretation or a computed tomography</p> <p>12 interpretation, CT scan, to the Social Security</p> <p>13 Administration from a radiologist that indicates a</p> <p>14 lung abnormality, but not a diagnosis of</p> <p>15 asbestos-related disease, is she, that patient,</p> <p>16 eligible for EHH Medicare benefits?</p> <p>17 MR. BECHTOLD: Beyond the scope.</p> <p>18 Q Go ahead.</p> <p>19 A No.</p> <p>20 Q All right. If we can go down to paragraph</p> <p>21 35. Ms. Nolan, what I'm trying to do is determine</p> <p>22 whether or not any of Mr. Bechtold's questions</p> <p>23 changed any of your answers related to paragraph</p> <p>24 35.</p> <p>25 If a health care provider submits an EHH</p>

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Exhibit C-31

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<p>1 checklist form on behalf of a patient, when the</p> <p>2 provider has actual knowledge that the patient</p> <p>3 does not have a diagnosis of asbestos-related</p> <p>4 disease, is that patient eligible for EHH Medicare</p> <p>5 benefits?</p> <p>6 A No.</p> <p>7 Q If we could turn to paragraph 40.</p> <p>8 THE COURT REPORTER: I'm sorry, which</p> <p>9 number did you say?</p> <p>10 MR. DUERK: I'm sorry. Paragraph 40,</p> <p>11 which should be on the very next page.</p> <p>12 BY MR. DUERK:</p> <p>13 Q Ms. Nolan, I just want to clarify, you</p> <p>14 know we've been through the different language of</p> <p>15 the Affordable Care Act and the different language</p> <p>16 of the POMS. Mr. Bechtold asked if any of his</p> <p>17 questioning changed your testimony. I want to</p> <p>18 make sure that none of the questions or issues</p> <p>19 raised changed your testimony about paragraph 40.</p> <p>20 That question is, are patients with signs</p> <p>21 of a fractured rib on a B-read chest x-ray but no</p> <p>22 diagnosis of asbestos-related disease eligible for</p> <p>23 EHH Medicare benefits?</p> <p>24 MR. BECHTOLD: Beyond the scope.</p> <p>25 Q Go ahead.</p>	125	<p>1 A Yes.</p> <p>2 Q And the provider in these cases involving</p> <p>3 CARD would be a provider or a physician from the</p> <p>4 Center for Asbestos Related Disease; is that</p> <p>5 right?</p> <p>6 A Repeat that for me, please?</p> <p>7 Q Sure. And the provider that we're talking</p> <p>8 about here, the provider that signs the EHH form,</p> <p>9 that would be the provider from the Center for</p> <p>10 Asbestos Related Disease, or CARD, in these cases?</p> <p>11 A Yes.</p> <p>12 MR. DUERK: Ms. Nolan, thank you very much</p> <p>13 for your time at deposition today. I appreciate</p> <p>14 you being here. I have no further questions.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MR. BECHTOLD: Thank you, Ms. Nolan.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MR. DUERK: Thank you, Ms. Nolan.</p> <p>19 THE WITNESS: Sure.</p> <p>20 THE VIDEOGRAPHER: All right. Everyone</p> <p>21 stand by and I'll read us off the video record.</p> <p>22 This marks the end of the deposition of Monica</p> <p>23 Nolan. We're going off the video record at 1352.</p> <p>24 (Off the record at 1:52 p.m.)</p> <p>25</p>	127
<p>1 A No.</p> <p>2 Q All right. Ms. Nolan, Mr. Bechtold talked</p> <p>3 about communication with the SSA. Is it your</p> <p>4 understanding that, at any time, a health care</p> <p>5 provider can call the Social Security</p> <p>6 Administration for clarification about the Social</p> <p>7 Security Administration's policies, including</p> <p>8 these policies in the POMS related to eligibility</p> <p>9 for Medicare benefits?</p> <p>10 A Yes.</p> <p>11 Q Okay. And finally, in terms of the</p> <p>12 questions asked by Mr. Bechtold, did any of the</p> <p>13 questions asked by Mr. Bechtold change any of the</p> <p>14 opinions that you expressed during this case in</p> <p>15 your direct examination?</p> <p>16 A No.</p> <p>17 Q Okay. So is it still your testimony -- as</p> <p>18 an SSA deponent, is it still your testimony that</p> <p>19 based on your review of the Social Security</p> <p>20 Administration's policies, is it still the Social</p> <p>21 Security Administration's position that a CARD</p> <p>22 patient must have a diagnosis of an</p> <p>23 asbestos-related disease certified by a medical</p> <p>24 provider on an EHH form in order to be eligible</p> <p>25 for Medicare benefits?</p>	126	<p>1 CERTIFICATE OF COURT REPORTER</p> <p>2</p> <p>3 I, SHAWN CAVALIERE, the officer before whom the</p> <p>4 foregoing proceedings was taken, do hereby certify</p> <p>5 that said proceedings were electronically recorded</p> <p>6 by me; and that I am neither counsel for, related</p> <p>7 to, nor employed by any of the parties to this</p> <p>8 case and have no interest, financial or otherwise,</p> <p>9 in its outcome.</p> <p>10 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>11 and affixed my notarial seal this 8th day of June,</p> <p>12 2023.</p> <p>13</p> <p>14 </p> <p>15 _____</p> <p>16 Shawn Cavaliere, Digital Court Reporter</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	128

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Exhibit C-32

Conducted on June 8, 2023

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1 CERTIFICATE OF TRANSCRIBER

2
3 I, Janice Willier, do hereby certify that the
4 foregoing transcript is a true and correct record
5 of the recorded proceedings; that said proceedings
6 were transcribed to the best of my ability from
7 the audio and supporting information; and that I
8 am neither counsel for, related to, nor employed
9 by any of the parties to this case and have no
10 interest, financial or otherwise, in its outcome.

11
12 *Janice Willier*
13 _____

14 Janice Willier

15 June 9, 2023

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